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ABSTRACT

In 1969, after much controversy and the submission of many bills, the New York State Legislature passed--and the Governor signed--a school decentralization law. The law went into effect on February 16, 1970, with the major transfers of power operative on July 1, 1970. This report examines those aspects of the three-year school decentralization experience that have the greatest relevance for the New York State Charter Revision Commission for New York City. It does not evaluate the overall success or failure of the present community school district system Rather, the focus is to evaluate the structural and functional elements of school decentralization that are germane to decentralization of other municipal services. Specifically, by pointing out the problems of the first years of the education, experience, the report seeks to help the Commission avoid pitfalls in the decentralization of other services, such as parks, and health and social services. As noted, education in New York City is primarily a State function. But school decentralization is important by analogy to the decentralization of municipal services. The Commission is to develop a plan for municipal decentralization based on an understanding of its probable consequences The short-term consequences of school decentralization are now said to be discernible. (Author/JM)

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IMPACT OF SCHOOL DECENTRALIZATION IN NEW YORK CITY ON MUNICIPAL DECENTRALIZATION

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June 1974

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PREFACE

Purpose of the Study

In its Introductory Report (April 9, 1973, p. 14), the State Charter Revision Commission for New York City declared its intention "to give the people of New York City the opportunity to decentralize their government." The Charter Commission is assessing the feasibility and probable implications of various decentralization possibilities.

The only major municipal function that has been substantially decentralized in New York City is the public and secondary education system. The Charter Commission determined, therefore, to examine the history, nature, achievements, and problems of school decentralization, and to draw lessons from that experience relevant to its interest in decentralization of municipal services.

Such an examination is important because the stated purposes of charter revision are similar to those of school decentralization: to obtain more citizen influence over the governing process; to overcome the sense of remoteness and apathy that exists throughout the city; to bring government closer to the people; to share with local residents responsibility for local decisions; and to improve delivery of public services.

Aspects of the New York City school experience analyzed in this study* include the election process; the functioning

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* The major portion of the study was completed in June 1973.

of Community School Boards; budgets and personnel; the role of district school superintendents; and relations between the central Board of Education and the Community School Boards.

To underscore the importance of relating the school experience to decentralization of other municipal services, this report discusses some of the issues the Charter Commission will face in trying to construct a workable model for municipal decentralization. No attempt is made to answer these questions in the report. That is the Commission's task. The report does, however, assess the school experience as it bears on these issues; present some tentative conclusions; examine the implications of findings for municipal decentralization; and identify important problems that should be explored by the Commission.

Outline of Work

The report has five major parts:

-- a summary of areas of inquiry, conclusions relevant to the schools, and implications for municipal decentralization;

-- a history of events that led to school decentralization and a statement of the goals of decentralization;

-- a description and analysis of the major structural elements of the decentralized school system;

-- a description and analysis of the major functions of the decentralized school system;

-- a number of conclusions and general impressions based on the data of the study.

Selection of Materials and Data

We emphasize that the sole purpose of this report on school decentralization is to help the Charter Revision Commission in its deliberations with respect to municipal reorganization. As a result, it has not been necessary to consider every aspect of the school experience. When the study team began work in 1973, it found confusing and incomplete information. Each of the local school districts had had unique experiences during the three years of decentralization. Therefore the report is selective. The two principles that have guided the choice of topics or areas of investigation are:

1) Relevance to the decentralization of municipal services; and

2) Adequacy of available information.

Each section presents school decentralization problems pertinent to questions under review related to municipal decentralization. Descriptive and analytical material is presented for each topic. The report tries to describe how the system is supposed to work, how it actually works, and the implications to be derived from that amalgam of intention and reality.

With limited time and staff resources, and a complex problem to study, we had to be highly selective in interviewing and data collection. We sampled the views of people at many levels within the school system, trying to focus

primarily on individuals known by reputation to have balanced views. Sometimes, however, we purposely interviewed people with partisan opinions. We chose interviewees from neighborhoods of varying income levels.

To obtain some depth of understanding of how the decentralized system works on a day-to-day basis in individual communities, we interviewed intensively in five school districts -- 1, 4, 9, 16, and 26. These districts were chosen because they represent a range of attitudes and experiences. In District 1 (Lower East Side) the ethnic composition of the pupil population differs substantially from that of the voting population, with consequences that have led to major community conflict.* In District 4 (East Harlem) the Community School Board (CSB) has had trouble carrying out its basic responsibilities because of a Black-Puerto Rican conflict exacerbated by attempts of a poverty organization to impose its political influence on the Board. District 9 in the Bronx (Concourse, parts of Morrisania and East Tremont) was selected because it had a strong "activist" community superintendent. Of the nine CSB members elected in the June 1973 elections, five were endorsed by the United Federation of Teachers (UFT). Quite possibly as a result, the community superintendent has resigned. District 16 in Brooklyn

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* The June 1973 election was declared invalid and a second CSB #1 election was held in May 1974.

(largely Bedford-Stuyvesant) is a relatively stable Black area where the CSB has been able to function rather cohesively. District 26 in Queens (Bayside, Douglaston, Little Neck, Bellerose) is a typical middle-class district with high-achieving students.

We interviewed 86 teachers (including 9 UFT representatives); 28 school principals; 44 supervisors; 14 Community School Board members; 12 district superintendents; 56 parents; and 31 individuals, both professional and lay, with special interest and expertise in New York City schools. We attended meetings of CSBs, parents, and teachers where we talked informally with participants. We met with members of the Board of Education.

Interviews alone were not adequate. The Board of Education supplied us with data on such matters as pupil population, ethnic breakdown of professional employees, and local budget allocations. Reports of other investigators helped to frame issues and dealt with some questions that could not be answered on the basis of interviews (such as the fiscal responsibilities of the local boards). We relied heavily on information gathered by one of our staff members, Dr. Jacob Landers, who served for over thirty years in the New York City school system.

In the interviews we tried to elicit as much concrete experience as possible. We first asked our respondents to describe their roles and responsibilities and the history of

their involvement with decentralization. Then we sought their views on specific problems. Only at the conclusion of our sessions did we ask for general opinions on decentralization.

Caveats

It is important to add some cautionary notes:

1) We examined a specialized form of decentralization. It has serious limitations as a basis for testing other models for decentralization of other City services.

2) It deals with a government function -- education -- that is unique in many ways. For example, education is a State function, and not a City function. The lines of authority run generally from the Board of Education to the State Education Department, rather than to the Mayor.

3) The findings may be premature in light of the newness of school decentralization. Although the school decentralization law took effect on July 1, 1970, plans had already been completed for the school year 1970-71. Thus Community School Boards have been fully responsible, in a practical sense, only for the school years 1971-72, 1972-73, and 1973-74.

4) A number of unusual circumstances, relating both to the passage of the School Decentralization Act and to the subsequent experience, may also dilute the relevancy of our conclusions to the decentralization of other City services.

5) This report has been conducted in such a short period and with such limited resources that its conclusions can only be tentative. The sample of interviews conducted and districts surveyed cannot possibly do justice to the complexity of the issues.

These reservations notwithstanding, we believe the report will be useful to the Charter Commission. We cannot often say that the school experience shows that a particular problem of decentralization should be solved in a particular way. But we <u>can</u> point up the likelihood of the problem's occurring in areas other than education, and direct attention to the need for careful consideration of the problem. If the school decentralization experience cannot provide solutions, it can certainly suggest parameters of inquiry for the Commission.

I. INTRODUCTION AND SUMMARY

I

INTRODUCTION AND SUMMARY

A. Introduction

In 1969, after much controversy and the submission of many bills, the New York State Legislature passed -- and the Governor signed -- a school decentralization law. Article 52-A of the State Education Law, entitled "New York City Community School District System," provided for the establishment of not less than thirty or more than thirty-three Community School Boards elected by registered voters and public school parents. Members were to serve two-year terms, after an initial term of three years. The school boards were given jurisdiction over elementary and junior high schools. Their powers included such matters as the determination of school curricula, the appointment and assignment of personnel "not inconsistent with the provisions of...any applicable collective negotiation agreement" (Section 2590-e (2)), and the hiring of a community superintendent as the chief education official of the community district. The Central Board of Education was also given many powers and duties, including the power to "determine all policies of the city district" (Section 2590-g). Article 52-A of the State Education Law is reproduced in Appendix A.*

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* Appendix A consists of the law as originally passed. There have been a number of amendments since that time.

The law went into effect on February 16, 1970, with the major transfers of power operative on July 1, 1970. This report examines those aspects of the three-year school decentralization experience that have the greatest relevance for the Charter Commission. It does not try to judge the overall success or failure of the present community school district system. Rather, the attempt is to evaluate the structural and functional elements of school decentralization that are germane to decentralization of other municipal services. Specifically, by pointing out the problems of the first years of the education experience, the report seeks to help the Commission avoid pitfalls in the decentralization of other services, such as parks and health and social services.

As noted, education in New York City is primarily a State function. But school decentralization is important by analogy to the decentralization of municipal services. The Commission is trying to develop a plan for municipal decentralization based on an understanding of its probable consequences. The school experience provides a view of the consequences (albeit short term) of one attempt to decentralize an important functional area.

B. Summary

Specific findings for school decentralization, and their implications for Charter revision, are set forth at the end of each chapter. They are summarized below.

1. History and Goals of School Decentralization

a. Conclusions for School Decentralization -- The impetus for school decentralization came both from public concern over the quality of public education in New York City and from a specific political challenge to centralized school administration. The 1969 New York State Legislature was determined to enact some kind of decentralization statute. However, in its haste and its desire to unify the many groups interested in the legislation, it created a compromise with many inconsistencies and ambiguities.

b. Implications for Charter Revision -- To minimize political conflict over Charter change, the Commission should try to build a consensus early. In developing any coalition, the Commission must expect civil service unions to exert considerable influence. The school experience suggests that either very strong leadership or advance cooperation of the most powerful political groups is more likely to produce a coherent plan than item-by-item compromise of widely divergent positions.

Legislative drafting should carefully define the extent, nature, and limits of power and authority placed at different levels. The granting of power to local authorities should

not be left exclusively to central authorities. Any decentralization plan should also contain sufficient detail on implementation of changes.

2. Structure of the Decentralized School System

a. Conclusions for School Decentralization -- The public does not seem to find (within certain limits) that the size or number of school districts is particularly important. Many people do, however, want a district with which they feel a historic and/or ethnic identification. During the initial stages of implementation, districting problems may have taken inordinate time away from other problems of decentralizing the schools.

Election of Community School Boards is accepted as the most democratic and fair means of selection. However, the election system in use causes problems. Proportional representation, the method used to elect Community School Board members, confuses many people. It is also claimed that many Boards are not representative of the public school pupils in their districts. Many critics contend that proportional representation -- by encouraging large numbers of candidates on the ballots -- makes it difficult for voters to know the candidates. Some of the technical requirements for running seem to have deterred worthy candidates.

There are few complaints about replacement procedures, length of term, or number of Community School Board members. But many people feel that allowing a school employee to

serve on a CSB creates a conflict of interest. Many also object to compensating the central Board members but not CSB members.

Voter turnout for CSB elections has been lower than hoped for, but not significantly lower than that for other school board elections in New York State. Organized groups have dominated elections as they do in partisan politics. Efforts to make the elections nonpartisan have proved to be futile. It is generally agreed that the elections have been conducted ineptly by the Board of Elections and the Board of Education.

The transition from centralization to a decentralized system was very awkward. No clear plan guided the change-over. The Interim Board of Education (see p.84) tended to consolidate and extend its power, often at the expense of district autonomy. It neither provided the districts with the help they needed nor fully recognized the authority granted to districts in the statute.

Generally, CSBs consider their most important single power to be appointment of the community school superintendent. Decentralization has changed both the position of community superintendent and the type of person in the job. Individuals have been selected not only for their competence but partly on the basis of ethnic and political background. The superintendent is now expected to be a budget manager, community leader, and CSB spokesman -- as well as a professional educator.

b. Implications for Charter Revision -- Election of local boards or councils is probably essential to authenticate their right of representation. It then becomes axiomatic that politics will play a large role in decentralized government. Recognition of this fact -- through the use of regular election machinery and dates, party nominations and designations, etc. -- may avert some of the confusion that characterizes CSB elections. To bring out voters, subdistricts for voting purposes might be preferable to at-large elections of all council members within a locality.

Although it can result in elected bodies more representative of minority groups than other elected bodies in the City or State, proportional representation creates serious new problems.

Consideration should be given to limitation of the participation and influence of municipal unions on local elections.

Compensation for local board members should be considered, but not at such a level that membership will become a salaried post.

Transition from a centralized to a decentralized system should not be accomplished under the sole aegis of the central body. If the central authority is to be divested of any real power, transition should be coordinated by an independent group with existing policy makers and administrators as resource people. An effective transition probably

cannot be accomplished without extensive retraining of both central and local personnel.

Relationships between a new district executive and local department heads, and between the district executive and the local board, will take time to work out. Unless the decentralization plan is clear about powers and lines of authority, the new system will be in trouble.

In appointing district executives who represent more fully the ethnic diversity of New York's neighborhoods, local boards may hire persons who do not meet traditional professional standards. This practice may result in conflict with the civil service bureaucracy and the unions. The status of local boards will be meaningless without the power to appoint district executives.

3. Functions of the Decentralized School System

a. Conclusions for School Decentralization -- The budget preparation process for the schools is pointless and frustrating for the CSBs, since their budget submissions have little bearing on final allocations.

The Board of Education has retained funds for CSB activities in functional areas where the law required power over funds to be given to CSBs.

The CSBs have received inadequate appropriations to carry out their budgetary authority, although that problem has been somewhat mitigated by the availability of special State and Federal funds whose use is less restricted than City tax-levy monies.

Budget administration by CSBs has been difficult and sometimes disorganized because of the constraints of central Board controls, contractual obligations, vagueness of the law, and inadequate fiscal training for local personnel.

In general, CSBs have used their limited funds as well as could be expected. Regulations concerning CSB expenditures were often ambiguous or nonexistent. But there have been few authenticated cases (involving only a few districts) of graft or corruption.

Most CSB members view control over personnel as their most important power -- now and for the future. They sometimes exert the limited powers granted them to hire personnel on the basis of ethnic or political considerations. Personnel matters have led to most disputes over decentralization, some of which have involved lawsuits, boycotts, or other forms of direct action.

School professionals often resent the CSBs, and this resentment has tended to strengthen the union, the United Federation of Teachers.

The power of the principal has declined under decentralization, and CSBs are forcing greater accountability from school personnel to parents and the public. CSB opportunities for selecting local personnel may have helped to maintain order and stability in the new system.

There has been little change in school curricula that can be attributed directly to decentralization. There is

insufficient evidence to determine whether the delivery of educational services, or the level of pupil achievement, has changed substantially because of decentralization.

Numerically, parent and community participation seems to have increased only slightly under decentralization, but the participation has become more intense. Parent and community groups are more active. They receive more attention from school personnel. The public obtains more information about the operations and management of the school system, pupil achievement, budget, and other local school matters.

b. Implications for Charter Revision -- Local boards should have a functional role in budget preparation, but the nature and limitations of that role should be clearly delineated.

Decentralization probably adds costs to the delivery of most services. The Charter Commission should weigh the restrictions of the present tax-levy budget against the need for some flexible funds for local boards equivalent to the special funds in the school budget.

Planners of municipal decentralization should recognize that the distribution of funds by formula has problems as well as advantages. For example, the allocation of funds to districts by formula has tended to be equal rather than equitable; and in the transition from allocation of positions to formula allocations, the districts with the largest percentage of poor children generally lost the most money.

Budget administration will be complicated under decentralization. The Commission should insure that a detailed plan is developed -- a plan that institutes reasonable controls on local boards, minimizes the constraints of contractual obligations, and provides trained local personnel to meet fiscal responsibilities of the local units. While some misuse of funds locally is probably unavoidable, the school experience does not indicate that widespread fraud is either inevitable or probable in a decentralized system.

Decentralization will be meaningless to most people if community units do not have at least some jurisdiction over personnel matters. Decentralization will create expectations among minorities that more minority personnel will serve their areas. The Commission should anticipate such expectations. The school experience suggests that personnel powers may be exerted in a more parochial manner by local units than by a central authority. This parochialism need not work against the City's general interests, nor adversely affect service delivery.

Even if their rights and interests are insured in any new system, municipal workers will be fearful, and the power of unions may increase. Serious labor problems need not follow from worker anxiety. The various administrative regulations and procedures that now apply to employees of the centralized system should be reviewed in the light of changes demanded by a decentralized system.

The school experience suggests that planners of municipal decentralization should be cautious about predicting improved service delivery during the intial years of major structural change.

Community participation in education seems to have been engendered by the sense of crisis that pervaded school issues in the 1960s. It may be that general municipal decentralization will not be able to elicit significant community participation in the absence of similar conditions.

II. HISTORY AND GOALS OF SCHOOL DECENTRALIZATION

II

HISTORY AND GOALS OF SCHOOL DECENTRALIZATION

A. Background: The Centralized System Under Fire*

To understand the pressures for reform that were brought to bear on New York City's public schools in the 1960s, one must look back to an earlier image of public education in the City. Before 1950 the New York City school system was often extolled as a model for big cities. In the public view, the system absorbed, educated, and sent on the road to success generations of immigrant children. Its special high schools were famous, its teaching staff the envy of other cities, and its graduates the recipients of a disproportionate number of prizes and honors. Teachers and administrators in the New York City school system were proud to be part of so successful an enterprise. There were, it is true, complaints about the bureaucratic rigidity and remoteness of central authority, as well as a number of reports that urged administrative decentralization. These, however, generally reflected a movement toward managerial efficiency rather than evidence of a ground swell of popular disaffection.

In the 1950s this image began to change. The school system did not effectively integrate racially, reading scores began to drop, and increasing teacher dissatisfaction

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* The material in this section relates to the period before school decentralization in 1969-70. Some of the criteria, such as reading scores, have shown some change recently.

manifested itself in the growth of unionism. The new educational problems flowed from several sources: demographic changes and resulting new tensions within the schools; a steady decline in pupil achievement; a heightened sense of alienation from the schools among low-income parents; a desire to make professionals accountable to the public; and bureaucratic stagnation in the Board of Education. These problems are discussed below.

1. Demographic Changes

For more than twenty years there has been a steady movement of predominantly poor Blacks and Puerto Ricans into New York City, and a corresponding departure of predominantly middle-class Whites. Between 1950 and 1960 there was a net loss by out-migration of 1,238,738 Whites and a net gain by immigration of 172,501 nonwhites and 209,261 Puerto Ricans. Between 1957 and 1969, the number of white pupils in the public schools decreased from 650,680 (68.3 percent) to 497,162 (44.2 percent); the number of Black and Puerto Rican students increased from 301,937 (31.7 percent) to 626,003 (55.8 percent). This transition brought with it a number of sociological and educational controversies that continue to this day. For example, did the flight of the middle class cause deterioration of the schools or did the deterioration of the schools drive away the middle class?

One important result of the demographic changes was the hardening and extension of patterns of housing segregation.

In Brooklyn and in the Bronx, many racially mixed or "fringe" areas became completely segregated by race and socioeconomic factors. Much of northern Brooklyn and almost all of the South Bronx became depressed areas, with school populations segregated de facto in areas as large as Harlem.

2. Pupil Achievement

Reading scores (the school system's standard measurement of pupil achievement) in schools with high concentrations of minority group children from poor families did not change much between 1955 and 1969 (see Chapter IV, Section C, Curriculum, pp.166-171). But the City-wide average achievement did drop, directly correlating with the increase in numbers of schools with a high concentration of minority children from poor families. The correlation simply points out that the schools were at least as unsuccessful for minority children in 1969 as they had been in 1955.

In 1966-67, one-third of the pupils in the elementary and junior high schools were one or more years below national norms, and the test scores were dropping steadily. In depressed areas the average student was almost two and a half years behind in reading in grade 8 -- that is, about half the pupils in such areas were more than two and a half years behind.

In 1965 Blacks and Puerto Ricans constituted about half the population of the city schools, but only 3 percent of the

enrollment at the special academic high schools. Between 1965 and 1966 the percentage of pupils below minimum competency in reading (according to the State Pupil Evaluation Program) increased from 31 to 45 percent. A special 1964 Board of Education study indicated that in the entire city, in June 1963, only 1,093 black and Puerto Rican pupils received academic diplomas, as compared to 19,636 white children. This occurred when almost half the school population was black or Puerto Rican. In June 1968, Haaren High School, ostensibly an academic high school, with an enrollment of 1,652, awarded only 15 academic diplomas.*

3. Alienation of Schools from Community

During the 1960s growing numbers of parents and citizens, especially in depressed areas, felt alienated from schools in their communities. The schools were seen as impersonal fortresses, removed from vital community concerns and staffed by teachers and principals who appeared uninterested in children. Simple inquiries often went unanswered. Parents were rarely consulted about matters of importance. Although local school boards existed, they had little power. Their members were appointed by the Board of Education (before 1962, by the Borough President), and it was believed that often only docile applicants were considered. Central Board authority

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* Birnbaum and Goldman in their study, "The Graduates," reported that of the black and Puerto Rican students registered in academic high schools as juniors in December 1968, 51 percent of the black students and 58 percent of the Puerto Rican students did not graduate in 1970. This would seem to indicate that about two out of three minority group students in academic high schools were dropping out before graduation.

remained strong, virtually excluding community influence. In 1965 the Federal government made large sums of money available for poor children under Title I of the Elementary and Secondary Education Act (ESEA). Programs were devised and the money spent without consultation with parents or community leaders. Nor were Community Action Agencies consulted as required by law. This deepened the cynicism and sense of powerlessness of many parents in low-income areas.

One cause of tension between residents of some depressed areas and education officials was the ethnic composition of school staffs and, most particularly, of the professional leadership. Minority group communities frequently felt that both the Board of Education and the Board of Examiners discriminated against black and Puerto Rican educators. A 1963 study showed that:

-- Only 8.28 percent of the professional staff (excluding principals) was black and less than 1 percent Puerto Rican.

-- Not a single high school principal was black or Puerto Rican.

-- In the academic high schools, only 3.6 percent of the teachers were black or Puerto Rican.

A 1966 follow-up study found only four black principals and no Puerto Rican principals in the City's 860 public schools. The first black high school principal was not appointed until 1968. Nor did the last half of the 1960s

bring much change in the ethnic composition of the teaching staff. A 1969 study by the Board of Education's Office of Personnel showed that in the previous six years the percentage of black teachers had increased from 8.28 to 9.13 percent. Meanwhile, the proportion of black and Puerto Rican students in the system had risen from 40.5 to 53.7 percent.

4. Lack of Accountability

The growing problems of the educational system -- declining achievement levels, controversies over integration, the alienation of the community from the schools, and the increasing costs of education -- led to public demands for increased accountability. By any objective standards, the New York City school system was not responsive to the needs of the taxpayers who supported it. City School Superintendent Bernard E. Donovan said in 1967:

> The staff of large city public school systems can no longer feel that the educational programs of the school must be left solely to the professional educators who are accountable to nobody but themselves. The children belong to the parents. The parents pay taxes to support the schools. The parents have a right to know what is going on in the schools.*

One evidence of the lack of accountability was the school system's willingness to tolerate incompetent staff. Appointment as a teacher or principal usually amounted to a guarantee of lifetime employment. Few appointed teachers

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* Donovan, Bernard E., "The Role of a School in a Changing Society" (address at Lincoln Center), June 15, 1967.

were denied tenure and the system -- for whatever reasons -- seldom disciplined tenured teachers. Principals were rarely dismissed, no matter how obvious their incompetence. In the late 1960s, however, community pressures literally forced the transfer of several principals to posts at Board of Education headquarters, at 110 Livingston Street in Brooklyn. Superintendent Donovan often referred to headquarters as the "Livingston Hilton" -- a resort for supervisors forced out of their districts and for whom no alternative placement existed.

5. Bureaucratic Problems at the Board of Education

Practically all observers agreed that New York's centralized public education bureaucracy was unresponsive.* Albert Shanker, president of the United Federation of Teachers, stated in a magazine article: "Parents have a legitimate grievance against the rigidities and the remoteness of the central bureaucracy."** The November 1967 report of the Mayor's Advisory Panel on Decentralization (the Bundy Report) sympathized with "teachers and administrators...caught in a

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* David Rogers' 1968 book, 110 Livingston Street, chronicled dozens of ways in which school administrators were unresponsive or insensitive. Examples included:
-- Letters to Board of Education headquarters went unanswered.
-- The Board often concealed from inquiring parents simple information about who was responsible for what.
-- When a staff member erred, no matter how seriously, the Board would protect him.
-- Central Board employees sometimes took their telephones off the hook simply to avoid being bothered.

** Shanker, Albert, "The Real Meaning of the New York City Teachers' Strike," Phi Delta Kappan, April 1969, p.437.

system that has grown so complex and stiff as to overwhelm its human and social purpose."*

Martin Mayer wrote in the New York Times Magazine of May 2, 1965: "All change is resisted...." Mayor Lindsay, in his letter of transmittal of proposed decentralization legislation to the State Legislature on January 2, 1968, referred to "a decision-making process made rigid by the excessive constraints accumulated over the years." Superintendent Donovan admitted in a speech that "centralization has become too overbearing and too monstrous, and thus lost a great part of its effectiveness." He spoke of its "rigidity," its "impersonal approach," and "too many layers of authority," all of which engendered "a climate of mistrust."**

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* Mayor's Advisory Panel on Decentralization of the New York City Schools (McGeorge Bundy, Chairman), Reconnection for Learning: A Community School System for New York City, November 9, 1967.

** Donovan, Bernard E., "Decentralization" (talk at Queens College Symposium), March 23, 1968, p.1.

B. Impetus for Decentralization

Much of the impetus for school decentralization resulted from conflicts over integration of the school system. During the early 1960s, massive boycotts -- staged by both pro-integrationists and anti-integrationists -- intensified feelings on the issue. However, professional educators alleged that demographic changes in the City, plus the segregation of housing, made any considerable desegregation of the public schools unworkable. In black communities an increasing number of residents began to substitute the cry of "Black Power" for the goal of integration. Many informed citizens, educators, and legislators came to believe that:

1) A sweeping reorganization of the City public school system was necessary.

2) The Board of Education was incapable of carrying out such a reorganization on its own.

3) The most pragmatic solution would be passage of a school decentralization act by the State Legislature.

In 1961, as a result of allegations of corruption in the building and supply programs of the Board of Education, a one-day special session of the State Legislature abolished the existing Board of Education. Among other things, the Legislature ordered that local school boards be "revitalized" and given advisory powers "to allow the maximum possible participation by the people of the City of New York in the

affairs of the City school system."* This was the first legislative step toward decentralization as a solution to the malaise of public education in New York.

Throughout the 1960s various groups maintained that decentralization -- rarely defined in operational terms -- would solve a number of the school system's pressing problems. In 1968, Superintendent Donovan said: "Let me make it quite clear that I am distinctly in favor of further decentralization."** Many union officials supported decentralization; the Temporary Commission on City Finances favored it; and the Mayor was advocating it.

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* Laws of New York State, 1961 (Extraordinary Session), Chapter 971.

** Donovan, Bernard E., "Decentralization" (talk at Queens College Symposium), March 23, 1968, p.1.

C. Goals of Decentralization

To clarify the relationship between the task of the Charter Revision Commission and the problems leading to school decentralization in the late 1960s, a presentation of the goals of school decentralization is essential. It should be remembered that the drama which culminated in enactment of Article 52-A had many actors -- union officials, politicians, community leaders, school administrators, ethnic groups, parents -- with diverse and sometimes conflicting decentralization objectives.

Although the impetus for decentralization had its roots in the dissatisfaction of many New Yorkers with the quality of education in the schools, the immediate goals of decentralization legislation were basically political. This is, perhaps, the single most important fact about the legislative development of the bill.

Significantly, the title of the Bundy Report, issued in November 1967, was Reconnection for Learning. For "reconnection" was the core objective of many of those who advocated school decentralization -- a reconnection among parents, professionals, and community in the educational interests of the children. The sharing of responsibility and power was seen as one possible answer to a school system that had become impersonal and unresponsive to community needs. Many felt that by making the schools true community institutions -- with parents playing a special role in day-

to-day operations -- citizens' alienation from public education in New York City could be overcome. As early-as 1961, observers of the school system were concerned about the separation of the schools from communities and from the parents of school children. For example, a report by Mark Schinnerer spoke of the need to "bring the schools closer to the people and the people closer to the schools."* James Bryant Conant, former president of Harvard University, said, in Slums and Suburbs, "...decisions made in the central office are remote from the many diverse neighborhoods which constitute the city... In any event, this procedure tends to isolate the community from what goes on in the school."

Another basic goal was inherent in the public concern about "reconnection." Parents and legislators hoped that decentralization would stimulate greater accountability from the school system's professional educators. Several kinds of accountability were sought:

1) Information about operations of the school system and access to those with power would be more easily available to parents;

2) Through greater involvement with the schools, local school board members, parents, and other citizens would be

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* Schinnerer, Mark, "Report on New York City School Reorganization," December 26, 1961, p.19.

able to assess the performance of teachers, principals, and other school workers;

3) Services provided by the educational system would be more visible;

4) Innovative and productive curricula and programs would be instituted;

5) Educational materials and supplies would be delivered more efficiently;

6) A greater number of qualified black and Puerto Rican supervisors and teachers would be appointed or promoted.

As the legislative struggle over decentralization evolved, it became increasingly apparent to State elected officials that decentralization offered the best hope for reducing City-wide confrontations over education issues. Many politicians believed that school disputes were dividing their constituencies, polarizing the City and making their jobs more difficult. During the legislative session of 1969, as the conflict over decentralization grew more intense, legislators joined together to pass a bill that would still the conflict and prevent a cataclysm in New York City.

The predominance of political considerations over educational ones was most evident in the last stages of the legislative battle over decentralization. Several people interviewed for this study were either present during legislative negotiations or in contact with reliable sources who

were present. The consensus is that substantive improvement in the academic achievement of New York City's students was not a stated goal. Thus, although public concern with reading scores was an initial impulse to decentralization, the delivery of educational services subsequently became a long-range goal which might result from structural changes. In evaluating school decentralization, therefore, we must bear in mind that educational aims were not the primary objectives of those who shepherded the final bill to passage. For them, the immediate goals were largely political and partly social.

D. Legislative and Related Developments: 1967 to 1969

An important legislative step toward school decentralization was the passage in 1967 of a bill granting New York City additional State aid for education by allowing it to calculate aid on a borough-by-borough, rather than City-wide, basis.* The same bill required the Mayor to submit a plan of educational decentralization to the 1968 Legislature.

Following this mandate, the Mayor appointed a panel, headed by McGeorge Bundy of the Ford Foundation, which in 1967 issued a report recommending creation of thirty to sixty largely autonomous community districts to run the City's schools. As indicated, the stated rationale for this proposed shift of authority was the need to reconnect citizens with their public education system. The Bundy Report supplied the basis for the Mayor's legislative proposal submitted to the Legislature on January 2, 1968, although the proposal differed from the Bundy Report in some respects.

Specific developments furthered the trend toward decentralization. In 1966, when the new East Harlem "showcase" school (I.S. 201) was scheduled to open, local parents protested its de facto segregation and called for "community control." The concept evolved rapidly and was merged with notions of decentralization for purely practical purposes --

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* Chapter 484 of the Laws of 1967.

to acquire more State aid and to relieve the Board of Education of some of its administrative tasks.

In 1966, reading scores of the City's students showed another alarming drop. In early 1967, the City Board agreed to set up three "demonstration" or "experimental" districts to test decentralization: Ocean Hill-Brownsville in Brooklyn; the Intermediate School 201 complex in Harlem; and Two Bridges on the Lower East Side of Manhattan.

The UFT, which was later to oppose a strong decentralization plan, took part in the formation of the demonstration districts and appeared to accept the need for reorganization. Sandra Feldman, a top UFT official, said: "The threat of violence in the ghetto is ever-present...Unable to make a breakthrough in housing or jobs, the Negro community has focused major protest action on the schools, where society's dereliction is painfully, undeniably obvious."* State Education Commissioner James Allen said that "drastic action can no longer be postponed."**

In 1968 the Legislature began leaning toward a strong decentralization bill, but it gradually became immobilized by the conflicting pressures. State Senator Earl Brydges noted, "There are more pressure groups, for and against,

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* Feldman, Sandra, Decentralization and the City Schools, League for Industrial Democracy, 1968, p.1.

** New York Times, March 30, 1968, p.20.

working on this than anything I've seen in my 20 years up here."*

The Mayor's proposals were never seriously considered. A compromise measure supported by Governor Rockefeller, Mayor Lindsay, and the Board of Regents foundered, partly because of internal difficulties, partly because of massive pressure generated by the UFT and its allies, including the Board of Education, and partly because of opposition from Senator John Marchi.

The demonstrations and protests that followed the assassination of Martin Luther King in April 1968 increased the pressure for a strong decentralization bill. At the same time the struggle between the educational establishment and the local administration of the Ocean Hill-Brownsville experimental district over the "transfer" of 19 white principals and teachers fueled the concern of union members, State legislators, and others that decentralization would mean runaway community control and racial violence.

In May 1968, the Legislature found temporary reprieve from the decentralization problem. It passed a bill submitted by Senator Marchi which postponed basic decentralization decisions until 1969 and transferred the legislative initiative from the Mayor to the Board of Education. Among the

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* New York Times, May 24, 1968, p.35.

bill's major provisions were the following:

-- The Board of Education was to prepare a decentralization plan, subject to approval of the Board of Regents, for submission to the 1969 Legislature.

-- The size of the Board of Education was increased from 9 to 13 members (allowing Mayor Lindsay to appoint 4 new members).

-- The Board of Education was given authority to delegate powers to local school boards. (However, very few substantive or important powers were delegated.)

-- The local school boards were given the right to hire district superintendents.

-- The demonstration districts were continued and given the status of other districts.

E. Legislative Session of 1969: Passage of the School Decentralization Act*

The teacher strikes in the fall of 1968 had significant influence on the legislative development of decentralization. Between the opening of school and November 17, 1968, three strikes took place in rapid succession. The third kept more than a million children out of school for over a month. Essentially a question of "teachers' rights," with the teachers white and middle-class in a minority group community, the strike tended to polarize the entire City along ethnic lines. Its consequences for school decentralization can be summarized as follows:

1) The UFT emerged from the strikes stronger than ever, with more powerful allies, and determined to use its influence to block any attempt at political decentralization or "community control."

2) The polarization between white middle-class communities and black and Puerto Rican communities increased the difficulty of passing any strong decentralization bill.

3) The Board of Education, blamed by both sides for indecision in the face of the strikes, lost credibility.

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* Some of the material in this section of the report is based on a study by David A. Breshnick, "Legislating New York City Decentralization" (unpublished Ph.D. dissertation, Columbia University, 1971).

4) Mayor Lindsay, seen as the man in control of the Board of Education, was widely blamed for the strikes and, as a result, toned down his advocacy of expanded school decentralization.

When the 1969 legislative session began, it was clear that one of the most urgent issues -- perhaps the most urgent issue -- was passage of a school decentralization bill. During the session, many decentralization bills were introduced. Although each had distinctive features, they can be divided roughly into three groups: (a) those that transferred the bulk of power to community school boards (political decentralization); (b) those that restricted local boards primarily to powers delegated by the central authority -- powers that could be recaptured (administrative decentralization); and (c) those representing compromises between the two basic approaches. Indeed, the bills covered a spectrum ranging from almost complete community control to purely administrative decentralization.

Those who favored "political" decentralization viewed community school boards as potentially autonomous entities, with substantial control over personnel and budget matters. Important supporters of this approach were the Board of Regents, State Education Commissioner Allen, Mayor Lindsay, a majority of the Board of Education, and some Democratic legislators. Those favoring administrative decentralization

wanted minimum power delegated to a small number of large local districts, to keep the Board of Education as employer of all personnel, and to retain the Board of Examiners. Supporters of this position included the UFT; a minority of the Board of Education; the Board of Examiners; most regular Democratic legislators; and Senator John Marchi, chairman of the State Senate's City of New York Committee. The Republican leadership -- Governor Rockefeller, Senate Majority Leader Earl Brydges, and Assembly Speaker Perry Duryea -- said they would not approve any bill that lacked support of a substantial majority of the New York City Democratic legislators, including a majority of the black and Puerto Rican legislators.

The Marchi Bill of 1968 had mandated that the Board of Education submit decentralization proposals approved by the Board of Regents. During late 1968 and early 1969 the Board of Education developed a decentralization plan, held hearings, then revised the plan and submitted it to the Regents for approval. But the Regents differed on several counts -- principally in their proposal for commissioners as the central authority instead of the usual lay Board of Education. Some Board of Education members agreed with this stance, but the final Board vote was to preserve itself. Because of this schism between the Board of Education and the Regents, the Republican leadership -- which had let it be known that it would support only a bill agreed upon by the Mayor, the Regents, and the Board -- withheld its support.

At this point Democratic Minority Leader Stanley Steingut introduced a Democratic compromise bill. The bill gave less power to local boards than proposed by the Regents and the Board of Education. It also called for the end of the experimental districts on November 15, 1970. Despite initial indications that the Democratic compromise bill might pass, the Board of Regents refused to support it, largely because of the vigorous opposition of the notable black educator Dr. Kenneth Clark. Senator Basil Paterson and Assemblyman Jerome Kretchmer were able to rally a spirited group of legislators against it.

The Republican leadership, still committed to a decentralization bill, continued its efforts to find a compromise. After much behind-the-scenes maneuvering, a compromise bill was drafted that followed the main outline of the Democratic compromise bill. It eventually won the support of the Board of Regents, the unions, a majority of the black and Puerto Rican legislators, and a majority of Democratic legislators. On April 30, 1969, it was passed by the Senate, 48-9, and by the Assembly, 125-23.*

Among those who voted against the bill were Senator Paterson, a liberal Democrat from Harlem -- because it did

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* The bill's title was "AN ACT to amend the education law, the election law and chapter five hundred sixty-eight of the laws of nineteen hundred sixty-eight, entitled, 'An act directing the Board of Education of the City school district of the City of New York to prepare plans for the development of a community school district system in such city....'"

not direct sufficient power to the local unit; and Assemblyman Vito Battista, a conservative Republican from Queens -- because it went too far in that direction. This underscores the essential nature of the bill as a compromise among conflicting points of view.

Virtually everyone who has worked with the School Decentralization Act has found it ambiguous and internally inconsistent. This may be attributable in part to the haste with which it was drafted. But the imprecision was also a factor of the process of compromise. Where sensitive issues were involved, language of the bill was often obscure. Whatever the causes, the bill that emerged was vague and contradictory.

Limitations include:

1) The statute does not have a general purpose clause to aid in the interpretation and implementation of specific provisions.

2) The division of powers between central and local authorities is often unclear. Sometimes the law is ambiguous as to the division of power between the Chancellor and the Board of Education and, at the local level, between the Community School Board and the community superintendent. Finally, it is unclear whether the statute gives residual powers -- those not specifically assigned -- to central or to local authorities.

3) The grant of personnel power to the CSBs is weakened or confused by other provisions that continue the Board of Examiners and restrict the powers of CSBs with reference to the appointment, assignment, promotion, discharge, and transfer of employees.

4) Despite a declared intention of bringing public school parents into policy-making roles, the statute grants parents few specific rights and no specific powers. They simply have the right to be members of a parents' association or parent-teachers' association, are entitled to "full factual information" about student achievement and certain other items, and may have "regular communication" with the school (Section 2590-d).

F. Conclusions about School Decentralization

1) The School Decentralization Act was passed at the 1969 legislative session primarily because a large number of people -- legislators, educators, and parents -- wanted a bill passed. In the absence of such pressure, passage of a decentralization bill would have been unlikely.

2) The urgency arose initially from the failure of the educational system to perform adequately for large numbers of pupils, particularly those from minority groups, and, secondly, from the conflict in many depressed areas of the City over how the schools should be governed.

3) Various special interest groups, particularly civil service unions, exerted considerable influence on the final bill.

4) The pressures and urgency that forced passage of a decentralization bill led to inconsistencies and ambiguities within the final bill. A number of important issues simply were either not addressed or ignored.

5) The long-range goals of school decentralization were to improve pupil competency, to obtain professional accountability, to reconnect schools with communities, and to end parent alienation from the schools. However, the bill's proximate goals were largely political and social -- in particular, to end City-wide confrontations and polarization over educational issues.

G. Implications for Charter Revision

It is difficult to draw from this history precise lessons for planners of municipal decentralization. The legislative struggle over school decentralization may be unique. Nonetheless, some of the problems in the evolution of decentralization legislation suggest practical guidelines:

1) At this time, there is little evidence of intense public or political pressure to decentralize the structure of New York City government. This may be an advantage in that advocacy positions have not yet crystallized, but it points to the necessity for broad support if a basic governmental change is to be approved by the electorate.

2) The lack of consensus before the 1968 legislative session led to major difficulties in passing legislation. Most participants had well-defined positions, generally supported by sizable constituencies, which could be changed only with great difficulty. Perhaps a less fragmented and more cooperative process would have resulted in a clearer perspective on the educational goals of school decentralization. The Charter Revision Commission should spend time in defining the specific goals of proposed changes and in building a coalition to support Charter provisions designed to achieve these goals. The Commission should expect special interest groups, especially unions, to exert strong influence in the process.

3) It is important to define the meaning of conceptual

words such as "decentralization" and "community."

4) Unless a crisis demands immediate action, it is preferable to clarify concepts and their implementing provisions before rushing toward passage of a Charter by a given date. Special care should be taken to define the nature and limits of power and authority to be placed at different levels.

5) Granting to central authority the right to delegate powers to local authorities is not likely to lead to any considerable amount of true decentralization, for the following reasons:

a. The central authority may be unwilling to give up real power.

b. The recipients of delegated power, knowing that it may be recaptured at any moment by the central authority, may be reluctant or unable to use that authority.

c. Difficult decisions will tend to rebound upward.

6) The legislators' concern with getting any decentralization bill passed led them to overlook important implementation problems in the final bill. For example, the legislation did not provide a mechanism for insuring that mandates were actually carried out; did not provide adequately for the education and training of those who would participate in the new system; and did not concern itself with evaluation of the changes. To disregard methods of implementing and

evaluating structural change is to jeopardize its success. The Charter Commission should devote more attention to such matters than did participants in the school decentralization process.

7) Before the final bill was developed, there were times when a more coherent plan might have been enacted. The lesson of those lost opportunities is that either very strong leadership or advance cooperation of political groups that can muster a popular majority is more likely to produce a coherent plan than item-by-item compromise of widely divergent positions.

III. STRUCTURE OF THE DECENTRALIZED SCHOOL SYSTEM

III

STRUCTURE OF THE DECENTRALIZED SCHOOL SYSTEM

Various structural aspects of school decentralization are discussed in this chapter:

-- Community School Districts

-- Selection and Organization of Community School Boards

-- Transition Period

-- Compliance by Community School Boards

-- Community Superintendents

Each section contains a description of structural elements, followed by an analysis, conclusions, and an assessment of the implications for Charter Revision.

A. Community School Districts

1. Description

The Decentralization Law (Section 2590-b(2)) provided for "no less than thirty nor more than thirty-three" community school districts. The New York City Board of Education was given responsibility for defining boundaries. Districts were not to cross county lines and no district was to contain less than 20,000 pupils in average daily attendance (ADA)* (Section 2590-b(2)(b)).

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* The minimum ADA requirement is now 15,000.

The criteria for creating districts were to include:

(a) taking into account the common and special educational needs of the communities and children involved, transportation facilities, and existing and planned school facilities;

(i) suitable size for efficient policy making and economic management;

(ii) convenient location for the attendance of pupils and geographic contiguity;

(iii) reasonable number of pupils;

(iv) heterogeneity of pupil population; and

(b) relationship to geographic areas for which the City plans and provides services (Section 2590-b(3)).

New York City currently has thirty-two districts of varying sizes and public school population. The number of public school pupils has been the dominant factor in determining district size and configuration. As a result, districts vary substantially in both voting populations and size. For example, although the pupil population of District 2 is only about one-fifth larger than that of District 1, its voting population is eight times as great, and it is much larger in size.

The ethnic composition of the voting population frequently differs from that of the parents whose children attend public schools. In some districts this has resulted in Community School Boards whose ethnic composition does not reflect that of the pupils under their jurisdiction.

Except in Manhattan and areas of Brooklyn affected by creation of new Districts 23 and 32, district lines closely parallel lines established in 1965, before decentralization. An important consideration at that time was the desire to achieve racially balanced pupil populations within districts (without necessarily integrating individual schools). In Manhattan, new district lines were drawn when decentralization went into effect. In Brooklyn, a new District 23 was created to absorb the former Ocean Hill-Brownsville demonstration district. Integration does not appear to have been a dominant factor in these changes. New boundaries were drawn for five of the six Manhattan districts. Of these five, two were predominantly Puerto Rican in public school pupil population and one preponderantly black.

There is no relationship between school district boundaries and those of other service districts within the City. Nor are the district boundaries related to the boundaries of Community Planning Districts, of which there are sixty-two, or of districts used in the Mayor's Office of Neighborhood Government program.

The legislation allows the Board of Education to redraw district lines in any odd year. The first major task of the Interim Board of Education, appointed in May 1969, was to establish new districts as a prerequisite for elections. This turned out to be a difficult task and the Interim Board spent an inordinate amount of time organizing the new districts.

Although few changes were made (except in the Borough of Manhattan), the Board became enmeshed in the time-consuming political, social, and ethnic problems of district boundary drawing, leaving insufficient time for other transition activities.

Of all the boroughs, districting problems were most serious in Manhattan, which stood to lose one of its six districts under a provision of Chapter 330 of the Laws of 1969.* Eventually the 1970 Legislature amended the Decentralization Act to permit Manhattan to retain its six districts. However, as indicated, five of the six districts were new. Only six weeks passed between approval of new districts by the Board of Education and the school board elections of May 28, 1973. The short interval made it impossible to develop appropriate election campaigns or to enable districts to develop a sense of identification. There were many complaints, and some of the problems that subsequently arose in the Manhattan districts may have resulted from this hasty schedule.

2. Analysis

Our interviewees rarely attributed service delivery problems to the size of decentralized school units. Occasionally they felt districts were not small enough to engender active community participation. There was little agreement on optimum district size for school management. In general,

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* This was the provision, since changed, for a minimum ADA of 20,000.

opinions about the number and size of districts tended to vary in accordance with interviewees' attitudes toward political decentralization. The less supportive the interviewee, the greater the preference for larger districts. For example, a few who had strong doubts about school decentralization favored borough administration; but a pro-Community Board member on the Lower East Side (District 1) advocated districts the size of an area served by a junior high school and its "feeder" elementary schools.

Interviewees in most cases felt that districts should observe strong historic or ethnic identification. This does not represent a repudiation of the desirability of integration. Rather, as the proportion of black and Puerto Rican children in the schools has increased, many people appear to have abandoned the possibility of racially balanced schools.

The ethnic composition of the Community School Boards in many districts has not reflected that of the pupils in the public schools. This has been the source of difficulty in some districts. The following section, "Selection and Organization of Community School Boards" (pp.60-83), contains additional information on this point.

Interviews elicited few complaints about lack of geographic relationships between school districts and other service districts, although this was cited as a problem by officials of the

Mayor's Office of Neighborhood Government program (ONG).* The advantages of geographic coordination of services were, however, recognized by interviewees. For example, one junior high principal reported that it was awkward to have to telephone two different police precincts when he had a problem.

Some interviewees felt that public consciousness of school district boundaries was high enough so that any change of boundaries to conform with other service districts would be upsetting and generate criticism. Others felt that less than three years' experience had produced considerable public sophistication about boundaries, and that a similar accommodation with any new boundaries would soon evolve.

3. Conclusions for School Decentralization

a. There are no quantitative data to support a finding that the size and number of existing school districts are either appropriate or inappropriate. Within certain parameters the number of districts does not appear to be important or controversial. Similarly, district size in geographic terms does not appear to be of particular importance except in connection with local board elections. Nor does the number of voters within a school district appear to be of great importance.

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* In particular, ONG representatives complained that school districts were too large for effective coordination with other key services represented in ONG District Service Cabinets. Examples of ONG's failure to launch specific interagency programs because of this problem were cited for Crown Heights. See report on Office of Neighborhood Government, prepared for the Charter Revision Commission.

b. However, increasing the size of a district can exacerbate problems of communication between candidates and voters (see pp.70-71, 81-83).

c. The great majority of parents and citizens preferred to retain existing boundaries even when (as in the case of the Bronx) their districts had more pupils than the City-wide average. The general public inertia toward change is likely to be overcome only when there are strong reasons (ethnic, political, etc.) for change.

d. Ethnic and historic identification are perhaps the most important factors for district size purposes. When people perceived themselves as being part of a community, they objected to separation. This was especially true when the community was composed primarily of a single ethnic group. The integration factor appeared to be of subsidiary importance.

f. Conversely, significant difficulties may result from combining different ethnic or socioeconomic groups, particularly for those districts which seem about to tip from one predominant population group to another.

g. The Interim Board of Education spent too much time on districting problems during its first year, to the point where its ability to function in other areas was impaired.

h. There was insufficient time between the creation of new school districts and CSB elections.

4. Implications for Charter Revision

a. Our study of school districts showed that parents were intensely interested in the boundaries -- so interested that even the possibility of slight changes could provoke a severe reaction. Parents evidenced a latent fear that district changes might be followed by school changes. By and large they were opposed to the latter. Accordingly, they tended to favor the status quo. Thus any attempt at even minor changes in school district lines in the interests of coterminality with other services should be approached with caution.

b. However, it is important not to overemphasize this lesson. The political, social, and parental ramifications of educational questions make the school situation quite different from that of other municipal services. For example, the stake of a parent in school boundary lines is surely much greater than the stake of most citizens in hospital service areas, police precinct boundaries, or sanitation districts. Nevertheless, the Charter Commission should recognize that people who are used to a set of district lines will be critical of changes -- especially if they have formed working and personal relationships within the old districts.

c. Ethnic and historic community identification may be important if citizens are to relate to any new local units of government. Citizens can be expected to oppose

creation of districts which are not based on identifiable and natural communities.

d. It may be necessary in some cases to combine different ethnic, historical, or socioeconomic communities within one district. If so, subdistricting for specific purposes (e.g., voting) might reduce the likelihood of conflict.

e. The desirability of having district boundary lines drawn by a nonpartisan group, with final approval by a political body, should be considered. There should also be ample opportunity for consultation with the public.

f. Sufficient time should be reserved between the creation of service districts and the election of local board or council members to allow for a meaningful choice.

g. The geographic size of a service district and its population, within certain limits, would appear to be of secondary importance. Thus anywhere between twenty-five and sixty service districts would seem to be generally acceptable.

B. Selection and Organization of Community School Boards

1. Description

The School Decentralization Act provided for community school boards with seven to fifteen members (Section 2590-c.1). Presumably CSB membership could have varied from district to district according to criteria such as geographic size or pupil population. The Board of Education chose to provide for nine-member boards for all districts.

CSB members are elected at a special election held in May in each odd-numbered year. Their first term was for three years -- 1970 to 1973. The 1973 elections were for two-year terms.

Originally the CSBs themselves were responsible for filling vacancies that occurred on the boards. However, a recent New York State Court of Appeals ruling (May 1973) states that unexpired terms on school boards must be filled through election "in the shortest space of time reasonably possible" (Roher v. Dinkins, 32 NY 2d 180). Candidates for membership on the boards are not to be identified by political party or other organizational affiliations.

To vote in a CSB election, one must be a registered voter in the district or the parent of a child attending a school under the jurisdiction of the CSB. "Parent voters" must register specially for the CSB election if they are not regularly registered voters. Registration for CSB elections does not constitute general voter registration.

Any registered voter or parent voter in the district may run for CSB membership. But a CSB member may not be employed by the community district served by the board. Nor may he or she serve on more than one CSB. Candidates must file a nominating petition with 200 signatures within four weeks of the election. There is no process for screening nominees.

Voting for CSB members is district-wide and by proportional representation. All school board members are elected at the same time, and there is no restriction on the number of terms they may serve.

CSB members serve without compensation, although they are allowed $50 per month for expenses ($100 for board chairmen).

The central Board of Education is responsible for providing training for CSB members.*

2. Analysis

a. Election process -- Most interviewees felt that CSB members should be elected. The primary reason stated was that since CSB members made decisions for the community-at-large, they should be chosen by the community.**

The underlying premise favoring election is that CSB

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* In the original law, training was the responsibility of the Chancellor (Section 2590-h(12)).

** This view suggests that people believe CSBs have some real power, although interviewees frequently asserted that the boards were relatively powerless.

members should be broadly "representative" of the interests and backgrounds of their constituents. By one analysis, anyone who is elected is "representative" in that he represents the views and interests of the voters. Another analysis would suggest that election might not be the most appropriate mode of selection for CSB members. It is often argued, for example, that CSBs, to be truly "representative," should reflect not merely the views of those who express their preferences in the polling booth, but also the background and status of all residents, whether they vote or not. Others feel that "representative" community school boards should reflect the ethnic and social composition of the (nonvoting) pupils in the local public schools.

Elections are opposed by those who:

-- believe the present process discourages good people from running, particularly those who do not want to expose themselves to the political battleground;

-- fear that the elective process leads to politicization of the schools;

-- feel that CSBs should represent only children in public schools, rather than <u>all</u> voters;

-- feel that, under existing conditions, special interest groups can determine election results;

-- espouse various forms of "participatory" democracy.

Thus "representativeness" will vary depending upon the basis for definition: total population, total adult population, eligible voters, registered voters, actual voters,

or parents of public school pupils. It will also be determined by the criteria used: ethnicity, sex, age, socioeconomic status, children in public schools, or geographic area. In short, it is very difficult to arrive at a commonly accepted definition of "representative."

Nevertheless, the disparity between the ethnic composition of the CSB and pupils in its schools poses the greatest problem. The 1973 CSB elections resulted in such disparities for a number of districts. Examples are:

District	% Minority Group Pupils *	% Minority Group CSB Members
1	92	44
2	68	22
10	54	0
11	52	22
14	91	33
15	70	11
17	92	33
18	45	0
29	72	33

In fact, minority group members are a majority for only ten CSBs, despite the fact that minority group students are in the majority in twenty-two districts. Seven districts have no minority group CSB members, although their average minority group pupil population is 33 percent, with a range from 19 to 54 percent.

On the basis of general population, whites would appear to be fairly represented on the CSBs, comprising slightly more than 60 percent of the City's population and slightly more than 60 percent of CSB members. However, using the public

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* As of October 31, 1971.

school population as the base, minority groups would appear to be vastly underrepresented. Although 65 percent of the City's public school students are black or Spanish-speaking, these groups have only 38 percent of CSB membership. This is, however, an increase over the 1970 election, when only 28 percent of elected CSB members were black or Hispanic.

Matched against the public school composition, CSB members are also disproportionately middle class and Catholic in relation to the City's general population. It is important to note that the high proportion of middle-class and white CSB members is characteristic of many elected governmental bodies in this City and State (e.g., the New York City Council and the New York State Legislature).

b. Filling of vacancies: number of members -- Between 1970 and 1973, the CSBs appointed a number of members to fill vacancies. These appointments tended to make the CSBs more representative of the ethnic make-up of both communities and pupil population. As of April 1973 (as compared to the 1970 election results), the percentage of white CSB members had decreased from 72 to 64 percent; Puerto Ricans had increased from 11 to 12 percent; and black members from 17 to 24 percent.

CSB members generally agreed that nine is a workable number of board members. Many felt, however, that there should be provision for the immediate filling of vacancies. Deadlocks resulting in eight or fewer members have under-

mined the effectiveness of some boards. For example, early in 1973, four of Manhattan's six districts functioned without superintendents, partly because divided and incomplete boards could not muster a majority vote. This problem may become moot with the new requirement that special elections be held in the shortest possible time to fill vacancies (see page 60).

Fewer problems have arisen with respect to the removal of members. Conflict-of-interest questions have arisen over some CSB members' interests in organizations contracting with school districts, but this does not appear to be a pervasive problem. The statute does not deal with this kind of conflict of interest, since applicable laws and regulations already exist. However, an unresolved issue for school decentralization is whether the potential conflict in allowing school employees to serve on CSBs is outweighed by having board membership open to as many informed residents as possible. In the 1973 election, for example, 31 of the 288 persons elected were school employees.

c. Role of special interest groups -- Well-organized groups have sought -- with some measure of success -- to dominate CSB elections. The UFT, the churches, local poverty organizations, and the Democratic and Republican clubs can bring out the vote much more effectively than parents' groups. In 1970 more than one-third of CSB members elected ran on church slates and more than two-thirds

ran on slates of one kind or another. In 1973, 54 percent of the 288 CSB members elected were endorsed by the UFT. Section j, below (pp.75-79), is an analysis of the role of the UFT in the 1973 elections.

d. Term of office -- Many interviewees felt that terms of CSB members should be staggered so that experienced holdovers could assist new members and give continuity to the boards. Reelection of incumbents would, of course, also provide continuity. In 1973, about two-thirds (179) of the incumbents ran for reelection, and 43 percent of those elected were incumbents, although the number varied from district to district. In eleven of the thirty-two districts, second-term members constituted a majority.

Several interviewees thought CSB members should be restricted to one or two terms in order to develop more local leaders to share in the privileges and responsibilities of elective office.

e. Conduct of elections -- Nearly every interviewee felt that the June 1973 CSB elections were poorly conducted. Both the Board of Education and the Board of Elections were widely criticized.* The former was accused

* On September 11, 1973, State Supreme Court Justice J. Courtney McGroarty ousted from office the nine members of Community School Board 17 in Brooklyn because of irregularities in the 1973 election. He also ordered a new election in the district, as requested by State Attorney General Louis J. Lefkowitz. The next day, State Education Commissioner Ewald B. Nyquist announced an inquiry into the 1973 CSB elections because of "widespread reports of irregularities and deficiencies." To conduct the inquiry, he appointed as his special adviser Max J. Rubin, former president of the Board of Education and former member of the Board of Regents. The Rubin Report appears in Appendix B. It should be noted, too, that on December 26, 1973, Federal Judge Charles E. Stewart, Jr., ordered a new election in Community School District 1, because of violations of voters' rights.

of indifference in planning and publicizing the CSB elections. For example, no official was assigned to be in charge of elections until March 1, 1973, and then only on a part-time basis. Interviewees also referred to the Board's apathy or outright hostility to the registration of "parent voters." The Board of Education had no funds in its budget for publicity or public information, although about $110,000 was made available through the Board of Elections from its $3.6 million budget.

Critics claim that the Board of Elections handled the registration drive ineptly, provided few instructions for the nomination of CSB candidates, and mishandled basic administrative procedures on election day. Most important, the Board of Education and the Board of Elections failed to allocate responsibilities in advance. Nor did they prepare a joint comprehensive plan in cooperation with interested agencies and groups.

Not all criticism of the conduct of CSB elections has been directed at central authorities. Many people observed that few districts took much initiative to get out the vote. For the 1973 election, only about 29,000 parent voters were registered during the City-wide drive and in several districts there appeared to be little CSB activity to encourage registration. It may be, however, that greater district activity cannot be expected, since local districts are given no funds with which to promote the campaigns.

f. Voter turnout -- In 1970, about 14 percent of registered voters voted in the CSB elections. In 1973 the figure was down to 10 percent. About 57,000 fewer persons voted in 1973 than in 1970.* The low turnouts have caused concern among those who feel that a measure of the success of school decentralization is citizen interest. Yet the record is respectable when compared with other jurisdictions. The overall New York State turnout rate for school board elections hovers around 15 percent. Paul Greenberg, head of the special unit of the Board of Elections that handled CSB elections, points out that in many affluent suburban communities school board turnouts are as low as 2 and 3 percent. The experience of other cities indicates that a bond issue attached to local school board elections tends to bring out many more voters than school candidacies alone. It is also important to note that, outside New York City, local boards of education establish tax rates and generally have much more power than the CSBs -- factors which undoubtedly influence voter turnout.

Availability of funds for local district campaigning probably would bring out additional voters, as would better publicity by the Board of Elections and the Board of Education. It is uncertain, however, whether such improvements would result in more than marginal increases in the percentage of

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* The special election in CSB #1 in May 1974 brought out a 30 percent vote in a hotly contested race.

voters. Nor is it even clear that the existence of a substantial controversy over school problems will bring out the voters. For example, in District 1, a fierce contest between two factions in the 1973 elections more than doubled the number of voters as compared to 1970, and increased the percentage of registered voters going to the polls from 15.0 to 22.5,* but in Districts 9 and 26 the percentage of those voting actually declined in 1973, despite intense competition for CSB seats and the existence of controversies which had been absent in 1970.

Many reasons have been cited for the decline in voting in 1973. These most frequently mentioned include:

1) The fact that the 1973 elections were no longer a novelty caused significant drop-off, particularly in middle-income areas, which had supplied the largest proportion of votes in 1970 (see pp.74-75).

2) In predominantly white and middle-class areas, in particular, the initial years of decentralization brought little evidence of a redistribution of power or real change in the schools. Since the perception of the people in these areas was that decentralization had little effect, there was a consequent loss of interest in voting.

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* See footnote page 73 for results of the 1974 special election in District 1.

3) Decreased voting in CSB elections is simply a reflection of growing voter apathy in general.

4) Neither the Board of Education nor the Board of Elections has made a serious effort to get out the vote, and parent and other private groups generally do not have the means to do so.

5) Procedures of the Board of Education and the Board of Elections were chaotic and confusing and tended to discourage potential voters.

6) Community school districts do not possess adequate systems of communication.

7) The Catholic Church, which in 1970 had played an important role in getting out the vote, largely abandoned its efforts in 1973.

8) Use of proportional representation tended to deter voters from going to the polls.

g. Proportional representation -- Many interviewees felt that proportional representation was confusing to voters and contributed to the low voting rate. Very few felt the method gave unfair advantage to particular groups of candidates. Officials of the Public Education Association (PEA) felt that the principal problem with proportional representation was not that it was confusing, but that it permitted so many candidates that voters could not get to know them. Nancy Ticktin, assistant director of PEA, pointed out that a proportional representation education project,

operative in 1970 but not during the 1973 elections, taught people to use the proportional representation system without difficulty. In any event, it is a fact that the valid vote was 97.4 percent in 1970, and 96.3 in 1973.*

Mrs. Ticktin further stated that the mechanical problem was less of a deterrent than the problem of unfamiliarity with candidates. The geographical areas for election were large, there were numerous nominees, and the systems of communication in the school districts were highly inadequate.

Many interviewees felt that a better method than proportional representation for achieving representative CSBs would be to divide districts into electoral units, each of which would elect one CSB member. Another suggestion, made by PEA, was for three subdistricts, each represented by three board members. The consensus among those favoring smaller electoral units was that a subdistricting method might achieve the benefits of proportional representation with respect to minority representation and also increase the electorate's familiarity with candidates.

h. Timing of the election -- Interviewees differed substantially on whether CSB elections should coincide with either primary or general elections. Originally, the CSB elections were held at a different time from regular elections

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* For an analysis of the use of proportional representation in CSB elections, see Appendix C.

on the theory that this would insulate them from politics. Virtually all interviewees agreed that any election system inevitably results in intense political activity and that, therefore, the original reason for a special date seemed fallacious. But other reasons were cited for opposing a change. For example, parent voters would be discouraged from voting since they are not eligible for nonschool elections. In this regard, the primary date might be more advantageous than the general election date since it would be less likely to overshadow the school election. On the other hand, turnout for primary elections is often not a great deal higher than for the 1970 school board elections. Some opponents of a general election date maintained that this would make the CSB elections seem unimportant by comparison with the election of other officials. Several people pointed out that the proportional representation process would seem even more cumbersome if attached to only one part of a ballot.

i. The 1973 election -- Some aspects of the 1973 election have already been noted. However, since the second CSB election was held within the past year, and since it seems to shed light on some school decentralization problems, it is given additional analysis.

In 1973, 10.38 percent of registered voters voted (370,204 out of 3,566,443) for 288 CSB memberships. Of

victorious candidates, 156* were UFT-endorsed and 121 were endorsed by parent groups. Sixty-nine were endorsed by both the UFT and parent groups. In twenty-one of the thirty-two districts, a majority of those elected were UFT-endorsed; in another five districts, four members (out of nine) were UFT-endorsed. In the two districts where the UFT was vehemently opposed to the community superintendent (Districts 1 and 9), the UFT dominated the election. In District 1, six of its candidates won,** and in District 9, five.

The ethnic composition of Community School Board members elected in 1973 mirrors the ethnic composition of the City's public school pupil population a little more closely than in 1970.

ETHNIC COMPOSITION OF COMMUNITY SCHOOL BOARD MEMBERS

1970 and 1973

	Pupil Population 10/31/71	CSB Members Elected 1970	CSB Members Elected 1973
Hispanic	28.7%	10.8%	13.2%
Black	36.3	16.8	24.7
White	33.3	72.0	61.8
Oriental	1.7	0.4	0.3

* In the new election in District 17 (see footnote p.66) seven UFT-endorsed candidates were elected, as opposed to six who had originally been elected.

** Five UFT-endorsed candidates won in the new election of May 1974 ordered by the courts.

In many individual districts there were no significant changes. In others, such as Districts 3, 12, and 19, there were changes in the ethnic composition of boards so that they now reflect more closely the ethnic composition of their pupil populations.

The decrease in voter turnout in the 1973 elections merits further analysis. The percentage of voter fall-off (from 14 to 10 percent of those registered) reflects both a drop in the actual numbers of voters (57,000) and an increase in the total number of eligible voters. There were about 500,000 more eligible voters in 1973, including many eighteen- to twenty-one-year-olds. It seems reasonable to speculate that few of these new young voters came out, because they were not as likely to care or know about the school boards. This factor may partly explain the percentage decline.

Those voters who <u>did</u> grow more apathetic occupy a relatively limited socioeconomic stratum of the City's residents. In fifteen of thirty-one districts (District 32 did not exist in 1970), the percentage of those voting dropped more than 3 percent from 1970. Eight of those fifteen districts were basically middle-income areas where more than 50 percent of the public school pupils were white. This is particularly significant in view of the fact that only ten districts in the entire City had a majority of white pupils. The greatest decline occurred most often in such districts. For example, three districts accounted for a net loss of

about 30,000 voters, with a decrease in each of about 10,000. They were: District 31 (all of Staten Island); District 20 (Bay Ridge, Borough Park, Bensonhurst, in Brooklyn); and District 30 (Astoria, Woodside, Jackson Heights, Elmhurst, Corona, in Queens). Thus it is probable that the City-wide decrease is attributable largely to the absence of voting by middle-class Whites.

A major aim of decentralization was to encourage participation of parents and residents who had previously been uninvolved in school policy. In view of the 10 percent who voted, it cannot be said that the lower 1973 turnout indicates the failure of school decentralization. Observing districts with the highest voter turnout in 1973 (District 1, 22.5 percent; District 18, 30 percent), one might conclude that school decentralization has provided an important forum in some districts for the expression of strong views on major educational policy matters.

j. UFT role in the 1973 election -- The UFT dominated the 1973 election. It conducted a well-financed and organized campaign to elect the candidates it endorsed. The union's success has caused fear among representatives of the Public Education Association and United Parents' Association that the union will increase its control of CSBs.

Candidates endorsed by the UFT were first selected at the district level, then approved by the union's executive board and delegate assembly. The center of campaign activity

was also the district, although central help was important. The UFT spent slightly more than $127,000 in support of the candidates it favored. Training was provided for the union's district representatives so that they could organize effectively for the election. In Districts 1 and 9, where the UFT believed that teachers' interests were most seriously threatened, the union played a more direct role by providing a larger share of the budget for district efforts and becoming involved in day-to-day campaign strategies.

According to UFT representatives, candidates were selected for endorsement who would: 1) uphold existing contracts and regulations; 2) recognize and deal with the union openly and positively; 3) be objective in decision making; and 4) help bring diverse groups together. Efforts were made to endorse candidates who represented the backgrounds of community residents, but this was not always possible. For example, Abraham Ruda, UFT chairman of District 1, described efforts to enlist UFT-endorsed Puerto Ricans. He said it was not possible to persuade a "fair" Puerto Rican to run. UFT committees also attempted to select candidates with other sources of political strength.

The UFT representatives who were interviewed gave the following explanations for intense union activity in the CSB election process:

1) The strength of the union and the maintenance of the professional stature of teachers

depend on the CSBs. An unsympathetic CSB can make life difficult for teachers and threaten the usefulness of existing contracts. Ronald Mailman, district representative for District 16, stated: "For us, the nature of the CSB is a matter of life and death."

2) The district superintendents and their office staffs can harass teachers so that they are not able to function effectively.

3) Some CSBs follow patterns of ethnic hiring and have abandoned the merit system. In response to the statement of District Superintendent Fuentes that he wished to redress an imbalance by giving preference to black and Puerto Rican teachers, Mr. Ruda of District 1 said: "We want an objective, professional superintendent who will hire on the basis of merit and not ethnicity."

4) Many CSB members seem to be more interested in politics than the education of children. The district offices must be prevented from becoming centers of political patronage.

5) In many districts, decentralization has brought about lack of respect for teachers as individuals and professionals. This attitude flows from the CSB and district superintendent and influences parents and community residents.

6) Teachers are not sufficiently consulted on important educational policies. Mr. Ruda alleged that a teacher representative was not allowed to attend meetings about the use of Federal funds under Title 1 of the Elementary and Secondary Education Act. In District 9, the union representative said he had not met with the CSB in two years.

7) Increasing physical attacks upon teachers and students require that the CSBs take a firm stand against violence in the schools.

The UFT used many traditional campaign devices. Even more important than money for district committees was "in kind" assistance: space, telephones, clerical services, art work, legal and professional services, a publicity network, information, meals, and volunteer support. Union members wrote letters, circulated petitions, distributed "palm cards," addressed mailings, canvassed door-to-door, mounted telephone campaigns, staffed a speakers' bureau, etc. By comparison, the Public Education Association, which spent more than $100,000 on legal services, voter information, and pressure on the Board of Education and Board of Elections, could not serve as a countervailing force to the UFT. Its status required it to be nonpartisan. In addition, it has no established political mechanism, no organization of workers, no decentralized apparatus, and limited access to

channels of communication. Most important, it has no base of popular support.

Most UFT district representatives interviewed indicated that they would prefer to return to a centralized educational system. They usually added that improvements were needed in the old system, but that the abuses and red tape of centralization were remediable and minor compared with the faults of decentralization.

k. Compensation -- Some interviewees alleged that lack of compensation deterred qualified people from running for membership on the CSBs, and most maintained that low-income members would give more time to their posts if they were compensated. In low-income areas there is considerable resentment that Board of Education members receive $100 or more per day while CSB members get $50 per month for expenses. Interviewees did not agree on what level of compensation would be appropriate, but there was general agreement that the present system was unjust and counterproductive and should be changed, either by providing some compensation for CSB members or by lowering the compensation for central Board members.

3. Conclusions for School Decentralization

a. While there were many complaints about the election process (cost, procedures, voter apathy, lack of representation, control by special interest groups, unwillingness of competent people to run, etc.), the legitimacy of

the resulting CSB is rarely questioned. The election process has involved significant numbers of individuals and is seen as an integral part of the democratic process that gives power to local communities and makes its representatives responsive.

b. The provisions and procedures of the law that sought to make CSB elections apolitical (as opposed to non-partisan) have proved to be futile. The act of bringing local citizens into the decision-making process was tantamount to endorsement of greater political influence upon the schools.

c. The complexities of proportional representation have been blamed for confusing potential voters and keeping them from the polls. More important, proportional representation presented so many candidates that the voter was often voting for totally unfamiliar faces. On the other hand, the use of proportional representation has resulted in the election of a percentage of black and Puerto Rican school board members which, for the City as a whole, approximates the percentage of Blacks and Puerto Ricans in the general population.

d. Many of the technicalities involved in political nominations -- which were transferred to CSB nominations -- proved unnecessary and served to discourage candidates.

e. There is a widespread belief that employees of the school system and elected officials of the State or its subdivisions should not be permitted to serve on CSBs. For

the former group, an inherent conflict of interest might exist, since teachers have City-wide tenure and collective-bargaining negotiations are conducted on a City-wide basis, with increasing participation of CSBs.

f. The number of members on each CSB (nine) appears to be satisfactory. However, there could be more flexibility regarding the number of CSB members in each district, depending on district differences and problems.

g. While the CSB membership term appears to be generally satisfactory, there is some feeling that terms should be longer and should be staggered to provide for continuity. In 1973, more than 40 percent of those elected were holdovers, but percentages varied widely from district to district. A longer term might also enable members to discharge their responsibilities more efficiently.

h. Voter turnout, while falling short of expectations, has approximated that for other school board elections in the State. It is possible that intensified efforts to "get out" a larger vote under the existing law will make only a marginal difference. Among suggestions to increase the vote are: 1) change the date of voting to coincide with either primary or general elections; 2) use subunits within districts for voting purposes and abandon proportional representation; 3) appropriate funds for the Board of Education to use in encouraging voting.

i. Special interest groups have dominated the two elections -- the Catholic Church and the UFT in 1970 and the UFT in 1973. The success of the UFT in 1973 underscores the disproportionate influence of well-organized groups that have important stakes in the outcome and that possess resources to sustain political activity.

j. Most people feel that CSB members should receive some compensation.

k. It is generally agreed that the Board of Elections and the Board of Education conducted the elections poorly. This may be attributable, in part, to divided responsibility. The creation of a separate unit (either within the Board of Elections or entirely independent) to conduct the CSB elections has been suggested.

4. Implications for Charter Revision

a. If significant power is to be devolved to local boards in any plan of municipal decentralization, election of members will tend to make them more legitimate and thus more acceptable to the locality.

b. An elective system will unavoidably involve political activity. Any attempts to circumvent this phenomenon will probably fail and may contribute to disorder in the new system.

c. A strong case can be made that the election of local officials should be openly partisan with provisions for such factors as: use of regular election machinery and

dates; party designation; and nomination by parties.

d. Methods must be established to project candidates to the voters. The possibility of small subdistricts for voting purposes should be examined.

e. The use of proportional representation would not appear to be the best way to make the candidates known to the voters, especially if the voting takes place at general elections. It may be useful to give a special unit within the Board of Elections responsibility for publicizing local elections, with its own separate budget.

f. Municipal unions will wield considerable power in municipal decentralization. They will be the most sophisticated organizers and, as a result, could very well constitute the dominant force in any new system. This possibility must be recognized and alternatives explored, including the possible exclusion of municipal employees from local office.

g. In many areas local elections could become relatively unimportant adjuncts of City-wide elections controlled by the political party machinery.*

h. The processes of nomination should be simplified, to encourage independent candidates.

i. Compensation of local council members should be sufficient to balance time lost from work.

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* Such is the case in the London two-tier system of government, where the results of local elections for London's thirty boroughs are almost always determined by trends in national elections.

C. Transition Period

The School Decentralization Act provided for an Interim Board of Education of five members -- one appointed by each of the Borough Presidents -- to function from May 1969 until installation of a permanent Board of Education on July 1, 1970 (Sections 2590-b). The idea of an Interim Board may have represented a compromise between those legislators who wanted a nonpartisan group, divorced from the Board of Education, to manage the process of decentralization, and those who wanted the Board of Education to preside over its own dismemberment.

During the interim period, the courts decreed that the plan for a permanent board violated the Federal Constitution under the "one-man, one-vote" rule. As a result, the Interim Board continues in existence to the present.

The Interim Board had four major functions: (1) to create districts; (2) to arrange for the election of Community School Boards; (3) to select a Chancellor; and (4) to arrange for the transition to a decentralized system (presumably in conjunction with the Chancellor). However, the position of Chancellor was not filled until September 1, 1970, when the Community School Boards began to function. Therefore, during the entire transition year (1969-70), the office of Chancellor was left vacant, being filled by "acting" personnel. This meant that at the same time the Interim Board was in charge of transition to the Community School District

system, it was also burdened with the day-to-day oversight responsibility for the vast school system and its bureaucracy.

It was clear to members of the Interim Board that, given the ambiguities and inconsistencies of the School Decentralization Act, one of their first tasks was to define its provisions and translate them into operational terms. It was equally apparent that a review of existing policy directives, regulations, and procedures was necessary to define the new functions and roles of school personnel.

Under the original 1969 law, the Chancellor was given the task of training CSB members (Section 2590-h(12)). At the request of the Interim Board, the 1970 State Legislature transferred this responsibility to the Interim Board. It was generally recognized that those associated with the new system, at both local and central levels, would need training and retraining. The School Decentralization Act provided that within sixty days after the effective date (i.e., by September 1, 1970), the Interim Board should transfer the appropriate employees to the CSBs (Section 2590-n(1)). Under the Act, the Chancellor was required to provide "technical assistance to community boards" (Section 2590-h(13)), an undertaking of obvious importance during a period of basic change.

The Chancellor was also required to "promulgate minimum education standards and curriculum requirements for all schools and programs throughout the City district and to

examine and evaluate periodically all such schools and programs..." (Section 2590-h(8)).

2. Analysis

With reference to the four major tasks of the Interim Board, two have been discussed -- creation of districts and school board elections. This analysis focuses on selection of a Chancellor and the transition to a decentralized system, as well as other matters relevant to the transition period.

a. Selection of a Chancellor -- During the entire transitional period (May 1969 to September 1970), the position of Chancellor remained vacant. Those who filled the position on an "acting" basis were either "lame ducks" (Dr. Bernard Donovan) or knew that their incumbency was temporary (Dr. Nathan Brown, Mr. Irving Anker). The absence of a Chancellor had many consequences. It made it easier for the Interim Board to interpret the Decentralization Act in accordance with its own views. The Board tended to absorb administrative and professional functions and consequently became overburdened and less able to accomplish its important functions. At the same time, the acting Chancellors were less able to play an appropriate role in the movement toward decentralization or to advance their own interpretations of the Act.

b. Interpretation of Decentralization Act -- In addition to the absence of a Chancellor during the transition period, the CSBs had not yet been elected. During the first

year of its existence the Interim Board reviewed with care those sections of the Decentralization Act relating to the three major power centers -- the Board of Education, the Chancellor, and the CSBs. In public statements, both collective and individual, the Interim Board made references to its intention to grant maximum power to the CSBs. In actual practice -- according to statements of individuals present at "interpretive" sessions and from an analysis of the Board's subsequent actions -- the law was interpreted to restrict the powers of the local level. In some cases, powers clearly intended for the CSBs, such as operation of lunch services for children, were retained by the central authority. As for the office of Chancellor, the Interim Board restricted its status to that of the former office of Superintendent of Schools, although it seems clear that the law intended additional powers. The Interim Board's "Discussion Draft of a Handbook for Members of Community School Boards" (August 10, 1970) spoke of "maximum local control." In reality, the phrase had a hollow ring.

c. Transition plan -- The Interim Board failed to prepare the necessary short-range and long-range plans and guidelines for the smooth transition of power and responsibility to CSBs. There was no overall blueprint; ad hoc groups were established to meet recurrent crises. In many functional areas there was no clear delineation of authority or responsibility. This situation resulted, for example, in

hiring of security guards previously convicted of serious crimes, and in disputes over certificates of competency -- just two of the many issues that caused conflict and bitterness between the Interim Board and local people. New plans, new concepts, and new strategies that should have been prepared were almost totally lacking.

In accordance with the suggestions of the Economic Development Council, a new position was recently established -- that of Executive Director of Community School Board Relations. The existence of such an office prior to decentralization and during transition might have resulted in better planning.

d. Codification and clarification of policies, regulations, directives, etc. -- The status of Board of Education policies was as ambiguous as the Decentralization Act. When officials at 110 Livingston Street spoke of "policy," it might mean a policy officially adopted by the Board of Education at a public meeting; a statement in a headquarters circular; a procedure originated by a minor functionary; or any one of a number of other possibilities. Policies did not exist in any codified form; and one of the major tasks of headquarters personnel was to identify the specific policies in a particular area and the source of policy pronouncement.

The Decentralization Act presented a host of new problems. There was the problem of preexisting policies,

rules, and regulations. What were they? Would they continue in effect? If so, to whom did they apply? It appeared necessary to review all policies, rules, and regulations; to redefine them; to readopt them, in whole or in part; to inform CSBs about what options were available with reference to policies and regulations and what restrictions existed. In short, the structural changes demanded a revised set of administrative policies.

The Interim Board did publish its "Handbook," but the document raised almost as many questions as it answered. It did not offer sufficient guidance about practical problems. The Interim Board had promised to publish a series of administrative manuals to serve as summaries of information and procedures. The personnel manual, the only one produced during 1970-71, was of little value. For example, it gave prominence to the minor CSB power to accept teachers returning from leaves of absence without pay.

The districts were forced to unravel and decipher a jumble of policies and regulations. Unfortunately, the local boards did not have funds to employ lawyers or analysts. The results were expressed, typically, by a CSB chairman who said: "I have to call headquarters. When I ask a question, I get nothing but double talk."* This confusion led to many conflicts over budget, personnel, repairs, use of buildings, and other matters.

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* Personal communication to a staff interviewer.

e. Training of Community School Board members -- Initial training for CSB members was inadequate. It was given at inappropriate times and did not stress the kinds of problems the boards would encounter. Nor did the Interim Board adequately instruct CSBs in the provisions of the Decentralization Act. As a result, many boards had no comprehension of the extent or limitations of their personnel powers. Although the initial development of any new structure is bound to be difficult, better training would have reduced the friction of the first years of decentralization.

The Interim Board organized a Consultative Council, consisting of one representative from each of the CSBs, which met bimonthly with an Interim Board member, the Chancellor, and other officials of the central bureaucracy. The consensus of CSB members is that it was helpful as a training device.

f. Training and assistance for CSB personnel -- It was clear that CSB personnel would need help. Many of the community superintendents were new and experienced ones were leaving at a rapidly increasing rate. Old forms of communication and liaison were broken or impaired. For example, one of the greatest needs of CSB personnel was a central clearinghouse for information so that, by dialing a single number, a local official could learn where to get help. No such capability existed; responsibility for assistance

to districts was highly fragmented at central headquarters. Central staff to supply technical assistance was either lacking or poorly trained. Guidelines, manuals, and outlines of procedures were not supplied except in the case of business operations. There was no administrative group to write simple operation manuals.

The districts could hardly assume the burdens of such complicated systems as lunch services and repairs without technical assistance. First the Interim Board did nothing to provide or train the required personnel, then it refused to transfer powers (given by law to CSBs) partly on the ground that the districts lacked the requisite technical capability.

g. Training and reassignment of central personnel -- It was necessary to review the existing central bureaucracy in the light of changes in functions, powers, and responsibilities; and in keeping with the transitional provisions of the Decentralization Act relating to the assignment of personnel (Section 2590-n) to the appropriate level.

In practice, no review occurred, except that local employees were transferred to CSB jurisdiction. There was little attempt to train central personnel in necessary supportive roles. The result was that minor functionaries kept requiring the same forms and stamping the same papers, just as they had formerly done.

h. Leadership of central authority -- During the transition period it was important to maintain effective stewardship over powers given to the districts. Specifically, the new system required careful and sensitive leadership, with constant monitoring.

This kind of leadership by the Interim Board was lacking on many issues: minimum standards and evaluation; racial integration; educational programs; individual rights. The general attitude seems to have been: "We shall reply to complaints -- but that is all."

i. Organizational maintenance vs. change -- The Interim Board's role was twofold: it was responsible for directing the old system while ushering in the new one. Such a task could only bring a certain ambivalence -- especially since the Interim Board believed that it might become the permanent Board. It was a formidable task for the Board to meet demands of day-to-day operations and, at the same time, plan for the future.

3. Conclusions for School Decentralization

a. The Interim Board used the transition period to consolidate and extend its powers.

b. A major flaw during the transition period was lack of an overall transition plan. Such a plan was especially needed because of the ambiguity of the Decentralization Act.

c. Policy existing at the time of enactment of the Decentralization Act was imprecise. Subsequently, little attempt was made to define policy or to apply it to the new decentralized situation. This was also true of general school regulations and procedures.

d. Inadequate attention was given to defining relationships among CSBs, and between CSBs and other units of government -- e.g., the City Budget Bureau, the State Department of Education, and the U.S. Department of Health, Education and Welfare.

e. Community School Board members were inadequately trained. This was due in part to the short time span between their election and their assumption of office.

f. New channels of communication between CSBs and the central authority were not established. Similarly, formal avenues of communication among Community School Boards were not established.

g. The training of district personnel in new responsibilities was not adequate. For most CSB functions, little or no technical assistance was provided by central headquarters to district headquarters.

h. Central headquarters staff was not transferred to local districts in accordance with the Act. Nor was the central staff adequately retrained in its new responsibilities.

i. The Interim Board found it extremely difficult to provide leadership to the school system at the same time it was attempting to change it.

j. The Interim Board did not monitor carefully the activities of the new CSBs.

4. Implications for Charter Revision

a. Generally, a group that holds power cannot be expected to divest itself of that power readily. This would suggest the need for an independent group to be in charge of any transition to municipal decentralization, with existing policy makers and administrators serving as resource people.

b. The transitional process probably would be more efficient if:

1) service boundaries were drawn first by a group other than the transitional group;

2) a longer period (perhaps six months) was allowed to prepare for elections;

3) an extended period was provided after elections and before local policy makers assumed office to enable them to become familiar with their new roles.

c. It may be advisable to transfer power to local units of government in stages.

d. A first task of any transition group should be to prepare a detailed plan for proposed changes, including a description of tasks and a timetable.

e. Existing laws, regulations, policies, procedures, etc., should be carefully reviewed to assess relevance to the new system. Changes should be made as necessary and appropriate written materials should be made available. The review should include relationships between the new local units and other agencies of government.

f. Other aspects of the transition process relevant to structural reorganization are: review and revision of communication and liaison systems; organization of district headquarters; retraining of district and central staff; education of the public; monitoring of local activities; technical assistance from central headquarters to districts, including manuals, guidelines, and necessary special task forces.

g. Items "d" through "f" above may not be within the mandate of Charter revision. They are included because we believe the Commission should be aware of the practical problems involved in any reorganization and because, in many cases, it may be possible to prepare for them well in advance.

h. Regardless of major structural changes, people at the lower levels of a bureaucracy will tend to continue to perform their jobs as they have done them in the past. Such attitudes demand an extensive program of reeducation and retraining of both local and central personnel.

i. It is probable that new cadres of local employees will be needed. Although it is not possible to anticipate fully their numbers or qualifications, it is clear that they will require a special kind of training. This problem requires early and urgent attention.

j. It may be unrealistic to require any group of individuals, no matter how competent, to operate an organization and at the same time assume responsibility for reforming it radically.

D. Compliance by Community School Boards

1. Description

Under Section 2590-1 of the State Education Law, enforcement of applicable law, regulations, and directives with respect to CSBs rests in the first instance with the Chancellor. He may issue orders to CSBs and, if necessary, supersede the CSB or suspend an entire board or any of its members to assure compliance with his orders. Actions of the Chancellor may be appealed to the central Board of Education and subsequently to the State Commissioner of Education. The CSB may also appeal to the courts, generally after administrative remedies have been exhausted. The Decentralization Act does not specify procedures for appeals to the Chancellor.

2. Analysis

The availability of an enforcement mechanism, with administrative capability, has been a vital factor in the preservation of balance in the Community School District system. For example, when the new system began operations in September 1970, one of the Chancellor's first actions was to supersede a Queens CSB to enforce a decision with reference to placement of children in its schools. Again, when the schools opened in September 1973, the Chancellor superseded District 4 and District 22 to assure compliance with orders concerning the placement of pupils. During the past three years this power has been used sparingly, but the fact of its existence has probably served as a major deterrent; and

the existence of avenues of appeal has exerted a restraining influence on CSBs. As yet, it has not been necessary for the Chancellor to remove an entire CSB.

Appeals against the actions of Community School Boards require machinery or channels to bring complaints to the attention of the Chancellor. Grievance procedures were not instituted until November 17, 1971.* During the preceding sixteen months there had been a number of difficulties because of the lack of procedures.

3. Conclusions for School Decentralization

a. Procedures under which the CSBs are answerable to the Chancellor seem to have worked well in practice.

b. The Chancellor's extensive administrative capability proved to be a significant asset.

c. The existence of avenues of appeal to a lay group (the Board of Education) has been a helpful factor.

d. The lack of specific procedures for appeals against CSBs to the Chancellor caused difficulties during the first months of decentralization.

4. Implications for Charter Revision

a. Local councils should be made answerable for their actions to some higher authority, preferably an executive of high status with administrative capability.

b. This individual should have the means to implement his decisions.

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* See Appendix D.

c. A lay (preferably elected) group should have appellate jurisdiction.

d. Avenues for appeal by individuals or groups against local councils should be developed as early as possible.

E. Community Superintendents

1. Description

The community superintendent is the chief administrative officer of the community school district. Although ultimately responsible to the State Commissioner of Education, he reports to the CSB. This is a change from the pre-1968 centralized system, in which the district superintendent was responsible to the Superintendent of Schools and then to the Board of Education.

Generally, the School Decentralization Act (Section 2590-f) confers on the district superintendent the same powers and duties with respect to elementary and junior high schools in the district as the old Superintendent of Schools had under the centralized system. The district superintendent also has specific authority to initiate charges against district employees, recommend suspensions, and transfer teachers and supervisors within the district, subject to stated restrictions and contractual obligations (Section 2590-j).

The CSB enters into a two- to four-year contract with the district superintendent for an annual salary (now $37,000) "fixed within the budgetary allocation therefor" (Section 2590-e(1)). Applicants must have state certification as superintendent, which requires a number of graduate education courses, several years of teaching experience, and some supervisory experience. An applicant need not have been a

school principal. District superintendents are removable by the CSB for cause, which is not defined in the legislation.

2. Analysis

District superintendents tend to fall into three groups:

a. a few holdovers from the predecentralization period (in Districts 27 and 29 in Queens and District 31 in Staten Island);

b. those who "came up through the ranks" in the New York City School System; and

c. a group of half a dozen or so, usually Blacks or Puerto Ricans, who did not have the requisite school administration experience required for district superintendent under the old system.

All superintendents look to their CSBs for guidance and support rather than to the Board of Education; but those community superintendents who rose through the Board of Education hierarchy tend to retain some professional identification with the Chancellor and the central bureaucracy.

In many cases, CSBs operate administratively in such a way as to undercut or supersede the authority of the district superintendent. In part, this is because the law does not spell out the powers and responsibilities of the district superintendent, but also because the CSB is the ultimate authority locally for what goes on in the district. Without question, the community superintendent must have the political skill to retain authority over his schools and principals.

Many superintendents feel this situation hinders them as educators; a few do not. Several pointed out that if they defy CSB directives they lose not only their jobs and tenure, but also the generous superintendents' pension, which is payable only after three years on the job. Since 1968, when the Marchi Bill first permitted local boards to appoint district superintendents, only three tenured district superintendents (two in Queens, one in Staten Island) have remained in the school system. There are several reasons for the high turnover:

1) Many of the 1968 district superintendents were in their sixties and ready to retire.

2) The Board of Education pension system is so generous that, for some superintendents, it was financially beneficial to retire.

3) The contract between the Board of Education and the Council of Supervisors and Administrators (CSA) provided for a year's leave at full pay in lieu of four earned sabbaticals. There was some concern that this privilege would be terminated in 1972.

4) Some community superintendents found it difficult to adjust to the changes wrought by decentralization. Specifically, the advent of CSBs as active supervisors threatened the power and autonomy of some district superintendents.

It is also clear that in many cases CSBs have been unwilling to limit their roles to lay leadership and policy guidance. Individual members, sometimes entire boards, have attempted to absorb administrative functions of community superintendents, and even of principals. Occasionally they have blurred the distinction between lay policy leadership and professional accountability, and in doing so have reduced the status of superintendents and principals.

This reduction of administrative authority for the office of superintendent may be part of the price that has to be paid for greater accountability to the community. But perhaps if the legislation had defined the superintendents' powers more precisely, the goals of both accountability and professional leadership might have been better served.

The total budget available to the community superintendent has decreased since 1970 despite the addition of many new responsibilities. A new central fiscal unit was added. Fewer professional positions were available, through tax-levy dollars, to enable the community superintendent to deal with instructional problems. The president of the Association of Assiscant and Community Superintendents has a sign in his office that illustrates the feelings and attitudes of many superintendents. It reads: "Looking for someone with a little authority? I have as little as anyone else!"

The section on the transition period (pp.84-95) alluded to the many new responsibilities acquired by the superintendents

under decentralization. Perhaps more than any other group, they needed a period of training or retraining. They also needed the assistance of middle-management specialists. This required additional money, which was generally lacking. Even where the CSB agreed and was willing to make money available, the Board of Education refused to permit assignments of specialists as a matter of policy.

3. Conclusions for School Decentralization

a. There is a lack of clarity about the powers of the community superintendent and about the relationship between the powers of the CSB and of the community superintendent.

b. This lack of clarity has led to intrusion by some CSBs into purely administrative and professional matters.

c. The CSBs generally regard their ability to appoint the community superintendent as their single most important power.

d. Decentralization led to changes in the usual avenues to the position of community superintendent. An individual no longer has first to be a principal. Individuals are sometimes selected not only for their competence, but also, in part, for their ethnic and political backgrounds. Such considerations appear to have been important in a number of districts.

e. The superintendent has been forced to become a budget manager, community leader, and CSB spokesman, as well as a professional educator.

4. Implications for Charter Revision

a. In any system of municipal decentralization, it will be important to spell out, as precisely as possible, the division of power and responsibility between the local council and the local executive; between the local department heads (e.g., police precinct captains) and the local council; and between the local executive and the local department heads. It can be anticipated that some of these relationships may be strained. There should be clear, specific delegations of power and lines of authority.

b. In the appointment of a local executive and (if lay boards are given that power) service agency heads, individuals selected may not always measure up to traditional professional standards. Indeed, there has been a distinct movement in many professions to open more routes to leadership, and to give greater weight to factors other than professional administrative competence -- especially skill in interpersonal relations. A likely consequence of lay control over any service will be a premium placed on the ability of administrators to relate to local residents. The school experience indicates that any new local councils may appoint candidates who might not have met professional standards under the old system. This may lead to conflicts, especially with the civil service bureaucracy and with unions.

c. Ethnic and political considerations will probably be very important in the selection of local profes-

sional leadership in most areas. Such considerations have not been absent in the past, in the selection of either district superintendents or other central level officials. Under decentralization, such factors will become more localized and often more obvious.

d. One alternative is a joint process for appointing a district's chief executive officer. For example, a local council might select from among a pool of candidates submitted by the Mayor. Elected local councils probably would resist this method. Resistance might be less, however, if a joint process was in effect from the beginning of any new system.

IV. FUNCTIONS OF THE DECENTRALIZED SCHOOL SYSTEM

IV

FUNCTIONS OF THE DECENTRALIZED SCHOOL SYSTEM

A. Budget

The bulk of this chapter deals with the four major features of the expense budget cycle: first, assessment of needs and preparation of budget requests to meet them; second, allocation of funds appropriated by the City; third, administration of funds, i.e., translation into programs; fourth, spending control and audit, i.e., means to insure that funds are used as intended. There is also a brief discussion of the capital budget and the budget for special funds.

During the first three years of school decentralization (1970-73), a number of unique or transitory conditions existed. These shaped in important ways the operation of the budget and financial administration systems and had a major impact upon financial aspects of the educational bureaucracy. The following appear to be the most important:

-- Before decentralization, the budgetary procedures and controls of the Board of Education were inadequate. A special State Senate committee found that Board of Education fiscal procedures were "totally inadequate" and "chaotic."* Mr. Joseph Monserrat, then president of the Board,

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* Special Senate Committee to Investigate the New York City Board of Education (Thomas Laverne, Chairman), "Avoiding Chaos in the New York City School System," November 10, 1972, p. 7.

said: "Decentralization of an ineffective system is not going to improve it."*

-- Staff deficiencies exacerbated more basic inadequacies. Numerous top level positions remained unfilled.

-- The budget deficit of 1970-71 had a pro found effect upon fiscal policy. In February 1971 the Board of Education announced a prospective shortage of $40 million needed to finish the school year at existing levels of expenditure. The result was an administrative trade-off in which tighter central budgetary controls severely limited flexibility of the CSBs.

-- During the two years CSBs have exercised budgetary powers (1971-72, 1972-73), there has been a net decrease of professional positions of about 5 percent. Thus the CSBs, during the time they were required to translate money into educational programs, have had to absorb budget cuts.

-- A corollary of the budget cuts is the unavailability of funds to pay for the costs of decentralization. Most analysts, both opponents and proponents of decentralization, have concluded that there are real costs attendent upon decentralization.

1. Budget Preparation

a. Description -- Section 2590-i(1-5) prescribes the expense budget request process. Each community superintendent prepares estimates in consultation with his CSB. The CSB then holds hearings and submits the request to the Chancellor in separate "units of appropriation." In consultation with the community superintendents and the CSBs, the Chancellor modifies the requests and relays them, along with

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* Staff interview with members of the Board of Education, February 23, 1973.

the rest of the City education budget, to the Board of Education for approval and submission to the Mayor.

b. Analysis -- The expense budget's local units of appropriation are called Programs 30 and 31. Program 30 is intended to include funds distributed by formula to the CSBs. Program 31 includes those funds spent for local programs and activities but, for one reason or another, kept under the control of the central Board.

Program 30 is in fact a geographically reported section of a budget that, in its totality, is departmental. The Board of Education has further divided Program 30 into six major categories or "modules": Module 1, Community Boards and Community Superintendents; Module 2, Instructional Services; Module 3, Continuing Education; Module 4, Special Formula Funds (N.Y. State Textbook Law Funds and Capital Note Items); Module 5, Special Purpose Funds; and Module 6, Fringe Benefits. Module 2 and the part of Module 6 that relates to instructional services absorb more than 90 percent of the district budget.

Both interviewees and those who have written about the decentralized school system assert that local efforts at budget preparation have had little influence on the final expense budget.* The allocation of most funds for districts

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* The Fleischmann Commission report (Vol. 3, p. 12.7) said that "budget preparation was not significantly altered under the new law"; and a 1971 study of District 14 prepared by McKinsey and Co. concluded (pp. 2-5): "The budget development process now serves little purpose at the district level."

is determined by formula, and the major variable is the size of the City's education budget. Therefore the functional purpose of CSB budget submissions seems to be to provide the Board of Education with information about localities' perceptions of their needs and to demonstrate CSBs' vigilance over budget matters to parents and other community residents. However, the informational value is minimized by the fact that no one helps the CSBs to frame their requests in realistic terms. Thus in 1973-74, District 9 requested an increase of 324 percent for instructional services over the allocation for the previous year, and the request of District 1 exceeded that of the previous year by 154 percent. Districts 16 and 26 were somewhat more reasonable, with increases of 10 and 20 percent respectively.

c. Conclusion for School Decentralization -- The budget preparation process is generally a frustrating and futile exercise for Community School Boards. The decentralized units should be given assistance with their budget submissions, and those submissions should serve a real function in overall budget development.

d. Implications for Charter Revision -- Disillusionment with the budget preparation process appears to result more from administrative inadequacies than legal requirements. Efforts should be made to instruct local units and the public as to the purpose and limitations of local budgetary requests.

2. Appropriations and Allocations for Community School Board Activities

a. Description -- When the City appropriates funds to the Board of Education, monies for CSB activities are included in separate units of appropriation. The funds are allocated among CSBs on the basis of objective formulas established by the Board of Education. The formulas must take into account the relative educational needs of the districts. If modifications are made, CSBs "may not transfer funds available for personal services of the teaching and supervisory staff, unless approved by the Chancellor" (Section 2590-i(8)).

During the first year of decentralization (1970-71) the formulas had not yet been developed, and the district budget was based almost entirely on the allocation of positions rather than money.

The following year, districts received funds within Program 30 for the first time, and it was their responsibility to "schedulize" this money -- i.e., translate it into programs with line expenditures for personnel, supplies, books, etc. Within each module of Program 30 allocations to districts were made according to a formula. Thus the instructional services module (Module 2), which included more than 90 percent of the funds in the Program, consisted of three major factors: a basic per capita distribution with weighting for school level and amount of teaching time required of

teachers; an adjustment for teacher salary differences; and a special needs allocation. (See pp.116-118 for a further discussion of the formulas.)

Community School Boards are not allowed to shift funds from one module to another, unless it is to move monies -- in accordance with a complicated set of regulations -- into Module 2. Except in the case of special imprest funds, the CSBs do not actually receive money. Their expenditures are bookkeeping transactions, with the City Comptroller maintaining physical control of the money.

b. Analysis -- There are three major questions with respect to the appropriation of funds to the Board of Education and their subsequent allocation to the CSB:

-- When should funds be allocated to CSBs according to formula (i.e., placed in Program 30), as opposed to being retained by the Board of Education for use on behalf of districts (i.e., placed in Program 31)?

-- Have sufficient funds been appropriated by the City to enable CSBs to discharge their new responsibilities adequately?

-- What criteria should determine the formulas for allocation of funds to districts -- particularly for instructional activities (Module 2)?

1) Program 30 vs. Program 31 -- In some areas where the law seems to give direct budgetary authority to CSBs, the Board of Education retained power by placing the functions in Program 31. This was done for any one of several reasons -- because the Board of Education doubted the capacity of CSBs to handle expenditures; or because a formula for distribution of funds was difficult to devise;

or because administrative difficulties of transferring certain powers to CSBs were too complex; or because the Board of Education simply wished to retain as much power as possible. In general, there has been a gradual movement of specific functions from Program 31 to Program 30 by a reluctant central Board in response to CSB pressures. For example, the Board's initially tight rein on CSBs with respect to school lunch programs, repair and maintenance of school buildings, leases for space for special programs, and transportation and audit is changing. Pressures from the City Budget Bureau, the Public Education Association, and the CSBs themselves have resulted in plans for decentralization of some of these functions. Two examples of problem areas follow:

i) School lunch -- Section 2590-e(7) clearly gives CSBs the power and duty to "operate cafeteria or restaurant services for pupils and teachers." But in 1971-72 and 1972-73 the Board of Education retained control of both funds and operations by placing school lunch monies in Program 31. After District 2 took the Board of Education to court to force compliance with the statute, the Board of Education agreed, in June 1972, to develop a formula for lunch monies and to turn over responsibility for lunch programs to the districts by February 1973. This was done, but only one district -- District 1 -- has thus far assumed that responsibility.

ii) School building repair -- A similar situation existed with respect to money for minor repairs of school buildings. Section 2590-i(5) gives CSBs the power and duty to "make repairs to all... buildings ...under its jurisdiction" up to $250,000 -- or more, with the Chancellor's permission -- in any fiscal year. However, the Board of Education largely maintained its predecentralization procedures. The money went into Program 31, and, in practice, districts have to "contract back" with the central Board for repair services. It now appears that this situation may be changed and some repair monies made available directly to districts. The Board of Education's Office of School Buildings, however, maintains such strict control over the use of outside contractors that district business managers may be deterred from exercising this power even when it is given to them.

The Board of Education has loosened its original tight control in several other areas where the legislation specifically provided for CSB authority over expenditures. A 1972 Public Education Association newsletter, in noting the extent to which CSBs have been limited to bookkeeping -- rather than budget making -- functions, stated that "for the 1973-74 expense budget...the outlook for significant change has been considerably improved."*

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* Public Education Association Report, December 1972, p. L-1, (Education Information Service, III-S).

2) Adequacy of appropriations for decentralization -- Both those who planned for decentralization and those who have worked to implement it maintain that additional costs are inevitable. The different problems of districts require local staffs to define priorities and to plan and coordinate programs. Local business managers are needed to oversee expenditure of the districts' multimillion-dollar budgets. More active parent participation in school policies creates a need for more effective public relations at the district level.

To the extent that decentralization creates need for new local personnel, it is expensive; but additional funds for school decentralization have not been appropriated. Although the CSBs had authority to conduct their own audits, the Board of Education did not provide funds. And despite greatly increased management responsibility at the local level, Module 1 funds in the budget for community boards and community superintendents did not increase significantly. In fairness, lack of resources to make decentralization a reality did not necessarily reflect Board of Education reluctance to allow CSBs to do their job. Decentralization coincided with a time of general fiscal constraint in which teaching positions were reduced by almost 5 percent between 1971 and 1973.

Fortunately, substantial amounts of State and Federal funds are available to the CSBs to enrich educational oppor-

tunities for needy school children. These special funds are regarded as "free" money by district officials because their use is relatively unrestricted. This money is usually used to hire paraprofessional employees, to introduce innovative programs, and to purchase special equipment. Community superintendents often use it to strengthen district headquarters staff and generally to provide their schools with whatever the tax-levy budget does not cover.

The eight neediest districts in 1972 (measured by the number of low-income pupils in the schools) received an average of over $6 million each in special funds, amounting to more than 25 percent of the funds in Program 30. Thus, with a very rigid tax-levy budget, the school districts are able to partly finance improvements through availability of these special Federal and State funds.

Without the leeway provided by this "free" money, the early years of school decentralization almost certainly would have been more difficult and frustrating for the districts. The money has been a crucial source of local budgetary power at a time when budget cuts otherwise severely limited the CSBs ability to act.

3) Allocation formulas -- The allocation of Program 30 funds among districts is determined by formulas adopted by the Board of Education. It has been charged that these formulas do not distribute funds equitably. Support for this charge comes from an examination of the formula for

the distribution of more than $800,000,000 in 1972-73 for instructional services. The formula's "adjustment for teacher salary differences" subtracts money from districts with less experienced teachers, who are earning less money. These districts are invariably low-income areas. The "special needs allocation," which gives more money to low-income districts, has far less impact than the adjustment for salary differences. One Board of Education official, arguing against the salary formula, noted the high correlation between those districts which lost funds as a result of the application of the formula for the first time in 1971-72, and those with a high percentage of pupils from families receiving welfare allotments. The Fleischmann Commission has stated that the adjustment for salary differences is a "clear violation of the law's requirement to take into account relative educational need."* A number of community school boards have protested the formula, but a suit brought by District 23 challenging it was dismissed, and there seems little likelihood that a different formula will be applied in the near future. This may be because all the existing formulas tend to level out differences, such as district size and educational need, so that amounts of money allocated tend to be equal, if not fair.

Thus, in practice, with reference to Module 2, the major source of funds for CSBs, the Board of Education has all

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* Fleischmann Commission Report, Vol. III, p. 12.29.

but abandoned the principle of compensatory education under which the most needy districts would receive large numbers of additional personnel.

In Module 1, for 1972-73, District 1, with about 17,000 pupils, received $484,402; District 19, of similar socio-economic status and with about 36,000 pupils, received $538,312, or only 11 percent more money. This illustrates the general tendency toward equal allotments in all distributions of funds, which in part results from the high visibility of allocations. Each district knows what the other districts receive; schools know what other schools receive. Faced with the hazardous task of awarding funds in full view of competitors, administrators often look upon "almost equal" allotments as the most workable solution.

c. Conclusions for School Decentralization

1) The Board of Education retained funds to be spent for CSB activities in functional areas where it was required by law to transfer power over funds to CSBs (or where the law could be so interpreted, or where the Board could voluntarily have given budgetary power to CSBs).

2) The determination of amounts in each unit of appropriation on a City-wide basis has restricted the CSBs' budgetary flexibility.

3) School decentralization has brought additional costs of indeterminate extent.

4) The CSBs have received inadequate appropriations to carry out their budgetary authority, although that problem has been somewhat alleviated by the availability of State and Federal funds less restricted in their use than tax-levy monies.

5) The allocation of funds among districts is objective but does not further equal educational opportunity.

6) There has been a distinct tendency to equalize allotments of funds among districts and schools regardless of need.

d. Implications for Charter Revision

1) The Board of Education's retention of budget powers underscores the need for an independent, nonpartisan group to oversee the process of transition.

2) The Charter Commission should consider carefully the restrictions of the present tax-levy budget in the light of the probable increased costs of decentralization, and the importance of providing an equivalent for the special funds (State and Federal) in the school budget.

3) Planners of municipal decentralization should be aware that distribution of funds by formula has defects: it is often unfair; it may not be responsive to variations in district need; it may lead to equality rather than recognition of differences; it may serve to penalize low-income areas and to limit equal opportunity programs;

and it maintains central control over a vital part of the budget process.

4) When, because of technical or other reasons, it is not possible to transfer functions to local units as required by law, the reasons should be fully explained and a timetable established for the transition.

3. Budget Administration

a. Description

The Decentralization Act gives the CSBs general responsibility for operating programs with funds allocated to the districts. It grants them specific power for planning and carrying out programs supported by special State and Federal funds. It also mandates the Board of Education to "develop and implement procedures for the establishment and subsequent modification of detailed schedules relating to the administration of appropriated funds allocated to the community boards...Such procedures, to the maximum extent feasible, shall...permit each community board to develop such detailed schedules and to make changes in them in the course of a fiscal year without prior approval of the city board, the chancellor or the director of the budget...." (Section 2590-(8)). These procedures must be consistent with sound fiscal practices, but must also permit each CSB to develop schedules and make changes in them without prior approval.

The law also provides for central Board determination of "all policies of the city district," and the CSB budget

modification powers are qualified by the requirement that the local boards must comply with "appropriate general rules" and "the educational and operational policies of the city board." Furthermore, the administration of funds appropriated to the districts is constrained by collective-bargaining agreements, which apply to most personal service budget items (which account for more than 90 percent of CSB expense budgets).

b. Analysis

Even under the best of conditions, CSB budget flexibility would be relatively limited. In a school system in which more than 90 percent of the money is spent on staff and in which contractual obligations are so constricting (see Personnel, pp.142-165), it is clear that with the present fixed budget, opportunities for change are minimal. Short of some new source of funds, the likelihood of a significant increase in budgetary discretion for the CSBs is also minimal.

The districts' capacity for managing programs has been limited by the general budget squeeze. From 1971-72 to 1972-73, the total funds in Module 1 decreased from $15,977,000 to $15,846,000. This decrease, coupled with rising labor costs and mandated expenses for business personnel, has forced the districts to cut educational services provided by tax-levy funds. In order to spend funds wisely, districts must be able to define priorities, develop program alternatives, and compare the probable effectiveness of alternatives.

Without professsional staff to handle these tasks and to monitor ongoing programs, the budget process cannot be used as a tool for action and reform. A management study of District 14 undertaken by McKinsey & Company stressed the connection between inadequate professional assistance in the districts and the budget process. "Poor decision-making procedures further limit the effective use of funds...the lack of adequate information on the effectiveness of various uses of funds clearly hinders any attempt to allocate available resources in a meaningful way."*

The Board of Education's policies have prevented the CSBs from exercising their statutory grant of power. Specifically, the pattern that emerges is that of a central authority which has constrained, sometimes illegally, the power of the CSBs. The Board of Education imposes on the CSBs strict budget controls and reporting procedures (perhaps partly as a result of the 1970-71 budget "shortfall" during the first year of decentralization). To meet even minimal standards of business administration it was essential for CSBs to hire business managers and accountants, but because the Board did not provide funds to meet this need, personnel were hired with Module 1 monies at the expense of adequate educational management for the districts.

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* McKinsey & Co., "Strengthening Community District Management," 1971, pp. 2-5.

Other problems for local budgetary administration result from the Board of Education's retention of authority and failure to help the districts take on their new duties. The Board informs districts of their budget allotments in June or July. Funds must be translated into programs by September. The central Board has not altered its old policy of approving all new positions developed anywhere in the school system, which deters local development of badly needed middle-management jobs. Despite legislative direction that budget modifications be permitted "without prior approval of the city board, the chancellor or the director of the budget," all modifications must still be approved by the City Budget Director before they can take effect. The total process generally takes from one and a half to three months or longer. A further control is the requirement (Section 2590-i(8)) that no modifications shall be made for personal services of members of the teaching and supervisory staff unless approved by the Chancellor.

Albert Shanker stated the matter clearly in testimony before the Charter Commission:

> ...what power are you giving a community board? You cut the budget and then you saddle them with ten contracts and tell them everything that they have got to spend, and then you say, "Go ahead, you go out and get elected and run a school system, but here is how you hire, here is how you fire, here are the salary schedules of people, here is how many hours they work, here are the materials that are approved City-wide," etc., and then give them the responsibility. It becomes phony*

* Transcript of February 9, 1973, hearing of the Charter Revision Commission for the City of New York, p. 5930.

A recent law journal article sums up the relationship between the CSBs and the Board with respect to budgetary administration:

> The law's direction to the City Board to permit local budgeting flexibility has thus far been ignored. No general scheduling rules have been adopted. Instead, the community boards have been instructed to prepare their local budgets in accordance with a detailed format established by the City Board....As one central administrator bluntly admitted, "the maximum extent of local flexibility considered acceptable in this regard is -- none."*

There is one area in which CSBs have effected savings -- Module 3 (Continuing Education). Included in this module are funds for use of school buildings after regular school hours. Through a variety of methods, such as consolidation of uses of buildings and closer attention to contractual details, fairly significant economies have been effected without diminution of services.

c. Conclusions for School Decentralization

1) When school decentralization was instituted, central budgetary procedures and personnel were inadequate.

2) The Decentralization Act does not give CSBs enough budgetary authority to enable them to carry out their functions, and some of the limited authority the Act does bestow on them has been withheld by the Board of Education.

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* Rebell, Michael A., "New York's School Decentralization Law: Two and a Half Years Later," Journal of Law and Education, January 1973, p. 20 (of reprint).

3) The Board of Education has imposed rigid administrative controls on CSBs which have provoked resentment and resistance. Many CSBs feel they have little more budgetary power than the former local boards, but many added responsibilities.

4) The various union contractual obligations, centrally negotiated, impose severe budgetary constraints.

5) The ambiguities and vagueness of the Decentralization Act, and of City and Board of Education budget procedures, have exacerbated difficulties and caused unnecessary conflicts.

6) CSBs, superintendents, and district personnel did not receive adequate training for their budgetary roles.

7) CSBs have not been able to institute major new educational programs and administrative reforms.

8) CSBs have used large amounts of their special Federal and State funds to institute programs employing paraprofessionals living in the district.

9) In a few areas, transfer of budgetary power to CSBs has resulted in operating economies.

d. Implications for Charter Revision

1) In considering a decentralized budget system, the Charter Commission should:

-- review existing budget procedures in the light of projected changes;

-- establish a clear model of budgeting in a two-tier system.

2) Whenever a power is given to a local unit of government, there should be a review of the budgetary arrangements for making that power effective.

3) The school experience with budgetary appropriations for local activities suggests that central authorities will be reluctant to relinquish the power they previously enjoyed.

4) A major danger for any significant municipal decentralization plan would be excessively strict central control over budget administration. It may be advisable to institute relatively tight controls at the beginning, and gradually devolve them as districts gain experience in accordance with a previously announced timetable.

5) Since contractual obligations represent major budgetary constraints, procedures should be instituted to limit these constraints and to involve local councils as fully as possible in negotiations.

6) Decentralized units must develop professional capability to translate dollars into services. Advance arrangements should be made for restructuring district recruiting of new personnel and for retaining existing personnel. It is clear that decentralized units will need significant administrative assistance in assuming even limited budgetary authority.

4. Audit

a. Description

The CSBs may be financially audited by the City Comptroller (Section 2590-m(7)) or by the Chancellor (Section 2590-h(21)) or they may do their own auditing (Section 2590-e, introductory paragraph). The Chancellor also has certain specific responsibilities in this area, through his power to examine and evaluate schools and programs, to promulgate minimum standards and curriculum requirements (Section 2590-h(8)), and to require reports (Section 2590-h(10), (11)).

b. Analysis

There are two basic ways to evaluate the CSBs' exercise of budgetary authority: (1) whether CSBs have used funds effectively and (2) whether CSBs have been fiscally responsible. With respect to the schools, the questions are whether the CSBs' budgetary authority has been exercised in the interests of the children and whether it has been exercised without excessive waste or fraud.

A definitive answer to the first question is not possible at this time. The CSBs have had so little discretion over how tax-levy funds are spent that policy patterns are difficult to discern. In addition, no relevant measures of budgetary effectiveness exist. This problem will be discussed at greater length in the section on curriculum (pp. 166-171).

The remainder of this section is devoted to consideration of the second question: Have the CSBs exercised fiscal responsibility?

The CSBs have not undertaken their own internal fiscal audits. Although the 1972-73 education budget included $400,000 to permit the central Board to conduct audits of local districts, no appropriation was made for CSBs to do their own auditing. The districts' options then were to request the central Board to perform audits (a free central service) or to use part of their small district headquarters allotment (Module 1). Not surprisingly, they have generally chosen the free service. For 1973-74 the Board of Education requested $500,000 for internal district audits to be conducted by the CSBs themselves. The request was cut by the Mayor to $400,000, and that sum was included in Program 30. Policies and procedures governing distribution of the $400,000 to CSBs have not yet been formulated.*

This represents another area where the grant of authority has been negated by inadequate means to exercise it. Whether because of the shortage of funds or the unwillingness of central authorities, the CSBs have not developed experience in auditing their fiscal activities. Many interviewees claim that qualified people are available to perform local

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* As of December 1973, the sum of $400,000 was still included in Program 30, but a formula for its distribution to districts had not been devised. In the meantime, audits of district funds continue to be made by the central Board's Bureau of Audit.

audits, but that assertion has not been tested.

Some interviewees charged that graft, fraud, and fiscal mismanagement were widespread among CSBs. Even CSB members alleged that other boards engaged in nefarious practices. Limited resources have prevented a thorough study of this question by the study team, but examination of State and City audits and investigative reports (as of May 1973) suggests that the charges are sometimes exaggerated or unfounded. For example, a 1972 audit by the New York State Controller's Office of the use of "cash fund" money by nine community school boards concluded that:

1) There are no central board policies on attending conferences or conference expenditures.

2) The districts made some unjustified purchases just before the end of fiscal year 1971 to avoid losing unexpended balances.

3) The requirements for sealed bids were not followed.

4) Interest-free loans were made to employees, and little effort was made to recoup the money.

With the exception of the last item, which involved only one CSB, the other matters were permitted by Board of Education policies, were common bureaucratic practices, or reflected unfamiliarity with procedures.

Another audit, conducted by the Board of Education for 1971, concluded that:

1) In one district about $6,000 had been drawn illegally through forgery by an employee. The employee was

immediately dismissed, and the bank involved was being sued.

2) In some cases itemized vouchers for expenditures were not available. There was no claim, however, that the expenditures were not actually made.

3) In some cases, equipment (desks, filing cabinets, etc.) was purchased and placed in the homes of members.

4) Some legal fees were paid improperly.

5) Some districts spent too much money for attendance at conventions.

6) Some districts spent too much money for refreshments and sundries.

Few of the cited CSB practices of this nature can be considered venal. In fact, the Board of Education is now proposing to legitimize a number of the practices under attack. A draft of a proposed resolution, dated February 26, 1973, would permit use of CSB funds for the following: educational conferences and conventions outside the City (for CSB members, professional staff, and students); cash advances to employees when salary checks are delayed; occasional car rentals; attendance at professional dinners; replacement of damaged or stolen clothing; telephone answering service for CSB members; and so forth.

In Districts 5 and 23, where serious charges of fraud and mismanagement have been made, State and City investigations have been conducted. In District 5 the investigators found disorganization and poor management and accounting

practices. In the case of District 23, a hearing officer for Chancellor Scribner found on April 7, 1972, that:

1) one member of the CSB was not eligible for membership;

2) another member of the CSB had probably been guilty of conflict of interest;

3) the use of Federal and State funds had not been properly approved;

4) some District 23 employees had harassed parents opposing CSB actions;

5) the chairman and two other members of the CSB -- as well as five employees of the district -- held leadership positions in a local Democratic organization. Furhermore, many principals and other District 23 employees contributed substantially to the club;

6) on at least two occasions the CSB had selected sites for rehabilitation in which members of the Democratic club had a significant interest. This action was taken by the District 23 board without disclosure of the conflict of interest and without vote at a public meeting.

Other charges are still pending against both CSB 5 and CSB 23.

Several additional cases of abuse of budgetary authority by a few CSBs have come to light during 1973-74, since completion of the basic research for this report. On October 5, 1973, Chancellor Irving Anker ruled that CSB 18

had acted improperly in the way it gave teaching jobs to three relatives of the board's president. Charges of improper overtime in Districts 4 and 5 have been made. In District 5, an employee was arrested for submitting false time sheets; and in District 4 an employee was suspended for the same reason. These two districts, as directed by the Chancellor, are conducting extensive investigations of alleged payroll padding. On May 20, 1974, an audit by the State Controller alleged that District 9 had wasted funds in contracts for computerized teaching and for management efforts over a two-year period.

While inept management and budget abuses cannot be condoned, it is impossible to achieve total honesty and efficiency in either a centralized or a decentralized system. Overall, the CSBs appear to have been responsible in spending the monies allocated to them. In general, what fiscal slippage may have occurred seems to fall short of the general charges often heard from interviewees about CSB fraud and waste. Many of these allegations may be attributable to the greater visibility of CSB activities and to the general dissatisfaction some people feel toward the new system.

It should be emphasized that the predecentralization system under the central Board of Education had similar problems from time to time. An entire Board of Education was once removed largely because of a building scandal, and the departure of a superintendent of schools was hastened by

discovery that school shop classes were building a boat for his personal use. Board of Education member Isaiah E. Robinson testified before the Charter Commission that there were all kinds of waste and misuse of funds by the central Board between 1961 and 1969, most of which never came to light because there was no audit requirement.

As with other areas, fiscal responsibility among the CSBs could be improved if more professional guidance were available. By and large, CSB members are diligent people who wish to discharge their responsibilities in the most ethical way. Guidelines for CSB expenses published by the central Board should help improve the local boards' fiscal performance.

c. Conclusions for School Decentralization

1) There is no evidence that CSBs have used tax-levy funds any better or worse than central authorities might have under a centralized system -- particularly in view of the limited control the CSBs have over their own budgets.

2) Most districts seem to have managed their money fairly well. Only a few districts appear to have been involved in authenticated cases of waste or corruption.

3) Districts have been unable to conduct their own audits because of a lack of funds.

4) Regulations concerning CSB expenditure of funds were often ambiguous or nonexistent.

d. Implications for Charter Revision

1) Standards of fiscal responsibility for new, inexperienced governing bodies need to be exact and explicit.

2) Detailed administrative regulations governing expenditures should be promulgated for decentralized units so that they will have a clear understanding of what is expected of them.

3) Frequent spot audits by a central authority would be appropriate.

4) While some misuse of funds on the local level is probably unavoidable, the school experience does not indicate that widespread fraud is either inevitable or probable in a decentralized system.

5. Capital Budget

a. Description -- Section 2590-i(13) provides that "the city board through the chancellor shall perform all functions in connection with the capital budget...except as otherwise provided herein." This latter phrase refers primarily to powers and duties of the CSBs as described in Sections 2590-e(11-19). Those powers are in most cases consultative or advisory, and generally give statutory sanction to a system that existed prior to decentralization.

b. Analysis -- Few changes have taken place in the capital-budget process under school decentralization. Because of the increased power and prestige of CSBs relative

to predecessor school boards, their advisory and consultative role carries more weight. Thus CSB pressures have achieved greater results in areas such as plans for construction, selection of architects, site selection, etc. However, in some cases rights cannot be exercised (e.g., the right to hire capital construction expediters) because of lack of funds.

Interviewees did not refer to the capital budget unless questioned about it. Even then they usually referred to specific projects in which they were interested, rather than to power distribution or administrative control.

c. Conclusions for School Decentralization

1) The transfer of power over the capital budget to local units does not appear to be an important or controversial issue.

2) The only critical aspects appear to be use of minority group contractors and hiring of minority group personnel. These both have ramifications that relate to bidding practices and union policies.

d. Implications for Charter Revision

1) Various groups (e.g., community boards and neighborhood action councils) now have powers or responsibilities relating to the capital budget. It will be necessary for the Charter Commission to review these community involvement mechanisms in light of powers to be assigned to any new local units of government.

2) Contract bidding and personnel problems will be important in any consideration of the capital budget process in a decentralized system.

6. Special Funds

a. Description -- Under Section 2590-i(14), CSBs are authorized to contract for and receive special funds (Federal, State, and private) as differentiated from tax-levy funds. All such funds are to be transmitted to the central Board and disbursed through the Chancellor, and must be used "within the scope of existing law and contractual obligations." In other words, these monies are subject to the usual constraints on other funds. The districts may enter into contracts for the expenditure of special funds subject to approval of the Chancellor.

Section 2590-i(14) also differentiates between "formula" funds and "nonformula" funds. "Formula" funds are those given to New York City, as a local educational agency (LEA), by either the Federal or State government on the basis of a fixed formula. The chief source of Federal formula funds is Title I of the Elementary and Secondary Education Act (ESEA); the source of New York State formula funds is the State Urban Education Act (SUE). In each case, since the formula is fixed, the amount of money to be received by New York City depends solely upon the total appropriation for ESEA Title I by the Federal Government, and for SUE by the State Government. The decentralization law requires the Board of

Education to allocate formula funds to community districts under a formula that "reflects the same educational and economic factors as the formula for apportionment of such special funds to the city district..." (Section 2590-i(11)(d)). In the case of formula funds, community boards are not considered LEAs. This means they cannot receive funds directly from Federal and State agencies. Project proposals for expenditures of formula funds must be reviewed by the Chancellor, but review is for form only (Section 2590-i(11)(d)).

"Nonformula" funds from Federal, State, or private sources are granted entirely at the discretion of the funding agency. Grants depend largely upon the excellence of proposals and whether they satisfy the objectives and guidelines of the distributing agency. A grantee is not entitled to a fixed sum. With respect to nonformula funds, CSBs may apply to the funding agency as LEAs. In general, they have the same powers to apply for funds and to receive grants as the Board of Education itself.

b. Analysis -- There have been relatively few difficulties with nonformula funds, but controversies about formula funds, especially from ESEA Title I, have been numerous and complicated.

First, the mandate concerning proportional distribution of Title I funds to districts has posed difficult problems. Prior to September 1970, the larger part of these funds had

not been equitably distributed, mostly because of contractual commitments to "special" programs. Some of these programs -- More Effective Schools, Five New Primary Schools, Strengthened Early Childhood, and Experimental Elementary Programs -- were embedded in the preamble to the Board of Education's contract with the UFT. In addition, most of the SUE funds for Community Education Centers had gone into two of the experimental districts, I.S. 201 and Ocean Hill-Brownsville.

The Board of Education tried to resolve this dilemma through a process of "phasing out" central support of special programs over a three-year period. For 1970-71 each district was required to provide one-third of the support, while the central Board (with money withheld from formula funds) supplied the other two-thirds. For 1971-72 the districts were to supply two-thirds of the support. But they were required to continue the "mandated" programs.

The districts objected strenuously on a number of grounds. Special funds were not being distributed equitably in accordance with the law; the central Board was mandating specific programs on CSBs when the law spoke of "review for form only"; and the central Board had no right to contract with the UFT concerning funds belonging to the CSBs. The local boards were particularly upset because these formula funds represented virtually the only "free" money available to them.

Community School Board 3 took its case to court, and its right to determine ESEA Title I programs free of central

mandates was upheld. The court denied the Board of Education any right to determine CSB programs with ESEA Title I funds, saying that if this were permitted, "the same section would grant authority to the Community Board to submit proposals and then take it away."*

Another problem for formula funds relates to the definition of "LEA." The U.S. Office of Education and the State Department of Education have ruled that, with reference to ESEA Title I, Federal law supersedes State law. The Federal Government does not recognize a subsystem unit, such as a community school board, as a LEA. Therefore, it has insisted that the Board of Education -- the official LEA in its eyes -- must review all project applications for both form and substance. The problem is still under discussion and a temporary modus operandi has been worked out involving minimal substantive review by the Board.

Another problem relating to ESEA Title I has been how the federal funds have actually been utilized by CSBs. The Federal law requires that these monies be used for compensatory education programs focused directly on educational problems of underprivileged children. Many local districts have complied with the intent of the Federal legislation by developing innovative and imaginative programs

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* Community School Board, District 3 v. Board of Education, 66 Misc. 2d 739 (Sup. Ct. N.Y. Co., 1971), aff'd, 38 App. Div. 2d 1932 (1st Dept., 1972).

to help needy children. However, some districts have used their Title I resources for the hiring of paraprofessionals and for other purposes not directly tied to student needs. Others have divided Title I monies among their schools with minimal planning, program restrictions, or follow-up evaluation.

c. Conclusions for School Decentralization

a. Legal provisions concerning the use of special funds have been effective except where central authorities attempt to interpret the law to retain power over CSB expenditures and programs.

b. Federal and State special funds represent the major source of budgetary flexibility for CSBs.

c. CSBs have sometimes used special funds to hire additional personnel rather than for compensatory educational programs.

d. Implications for Charter Revision

a. The special funds program under school decentralization appears to have been sufficiently successful to warrant a comparable funding plan for municipal decentralization.

b. The implications of proposed changes under State and Federal laws and regulations should be explored thoroughly and in advance.

c. Without stringent guidelines and monitoring, it is likely that new decentralized units will use any

special funds to meet their most pressing and immediate needs, such as additional administrative personnel and community-based staff. Thus any attempt to restrict the use of funds to "innovative" or "compensatory" programs should probably be avoided.

B. Personnel Issues

1. Description

The Decentralization Act gives the CSBs power to "appoint, define the duties, promote and discharge all its employees and fix their compensation and terms and conditions of employment, not inconsistent with the provisions of this article or any applicable collective negotiation agreement" (Section 2590-e(2)). Section 2590-j, however, narrows this general power considerably. It restricts appointments to teachers and supervisors who have passed examinations administered by the Board of Examiners, with the exception of teacher appointments to elementary and intermediate schools ranking in the lower 45 percent on the City's reading scores. Section 2590-n confers City-wide tenure upon teachers and supervisors.

Collective bargaining agreements further limit CSB power over personnel. The UFT contract covers such working conditions as class size, teaching periods, and preparation periods. There are also provisions for review of the denial of teacher tenure, for limits on transfer of teachers among schools, and for the order in which teachers are to be laid off in the event of City-wide budget cuts. Parts of the law (Section 2590-j(7)(8)) also provide in detail for due process for teachers when a CSB wishes to discipline or transfer them.

Some restrictions on CSB power over supervisory personnel

were at least temporarily eliminated by a 1971 court ruling that enjoined the holding of examinations for supervisors, the issuance of eligibility lists for supervisors, and the appointment of eligible candidates for supervisory positions from existing lists. The U.S. District Court ruled* that the disparity between the passing rates of white and nonwhite candidates was likely, in a subsequent trial, to be held evidence that the present examination system discriminated against Blacks and Puerto Ricans. Subsequently the Board of Education issued regulations under which CSBs could appoint acting supervisors. Such supervisors were required either to hold State certification for the position or to meet the requirements of the last examination for the position given by the Board of Examiners, but they were not required to take examinations given by the Board of Examiners. Thus Community School Boards won a great deal of discretion in the selection of supervisory personnel. In June 1973 a tentative agreement was reached under which the original injunction was lifted. "Acting" supervisors are to be given special on-the-job examinations to enable them to qualify for regular appointment.

Section 2590-g(6) of the Decentralization Act provides that the Board of Education shall be the employer of all

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* Chance v. Board of Examiners, 330 F. Supp. 203 (S.D.N.Y., 1971), aff'd, 458 F. 2d 1167 (2d Cir., 1972).

education personnel for purposes of collective bargaining. The Board was required to establish formal procedures under which CSBs would be consulted with respect to collective negotiations. The Consultative Council of CSBs and the Board of Education agreed that three representatives of the CSBs may sit at the bargaining table to serve in an advisory capacity during the negotiation of each contract. Specifically, the Consultative Council has designated seven members as its "team" for collective bargaining. This "team" then assigns three of its members to each negotiation. In practice, the CSBs have taken an active part in only three contracts -- those with teachers, supervisors, and custodians.

2. Analysis

The dynamics of local involvement in personnel matters are in some respects like those of CSB authority over budget. In each case the statutory provisions are sometimes ambiguous and the initial grant of authority to the CSBs has been restricted in various ways -- by general grant of policy power to the central Board, by union contract, or by specific limitations on CSB control of teacher employment.

It is helpful to examine some of the specific limitations upon the general grant of power over personnel to CSBs as contained in Section 2590-e(2), quoted above (see p. 142).*

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* A description of all limitations is beyond the scope of this report. Section 2590-j of the Decentralization Act, which covers eight pages, reads like a union contract, and the 1969-72 UFT contract contains more than a dozen employee contracts. In this regard, Section 2590-e(2), giving CSBs

Some restrictions on specific powers of CSBs with particular reference to special service** and middle (intermediate and junior high) schools are as follows:

Appointments -- The Chancellor promulgates requirements for all teaching and supervisory jobs (Section 2590-j(1)). The Board of Examiners prepares and administers examinations for all CSB teaching and supervisory positions, except that of superintendent (Section 2590-j(3)), and appointments may be made only from among those who have passed these examinations, with one exception (Section 2590-j(4)). For schools ranking in the lowest 45 percent in the City in reading, there are procedures by which the Board of Examiners may be by-passed in the appointment of teachers (Section 2590-j(5)). But such teachers must be appointed between October 1 and May 1, to begin work the following September, and it is a fact of educational life that almost all teachers are selected between June and September. Thus this provision is of dubious value.

Definitions of duties -- The Chancellor promulgates requirements for all teaching and supervisory jobs. With the approval of the Board of Education, he creates and abolishes titles for all positions (Section 2590-j(1)).

Assignment -- CSBs may appoint teachers to schools only after the Chancellor has assigned them to the district (Section 2590-j(4)). During the first week of the school term, substitute openings may be filled only by assignments of the Central Placement Bureau (UFT contract IV D2). In any school, 5 percent of the regularly appointed teachers may transfer out, without permission of the sending or receiving district, solely on the basis of seniority (UFT contract IV B1b). Tenured teachers and supervisors may be transferred within

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* personnel powers, includes the phrase, "not inconsistent with...any applicable collective negotiation agreement."

** "Special Service" schools are those with a high concentration of educationally disadvantaged pupils for whom special servcies are provided. They are sometimes called "Title I" schools.

the district without their consent only for four very specific reasons -- after a disciplinary hearing resulting from the preferring of charges; as a result of excess staff in a school; to staff a new school; or to fill a vacancy in another school, under highly specific safeguards (Section 2590-j(8)).

Promotions -- As noted above, passing a Board of Examiners test is required for promotion (Section 2590-j(4)).

Discharges -- The Decentralization Act (Section 2590-j(7)) has three pages dealing exclusively with procedures for bringing charges against tenured teachers. A hearing officer is selected from a panel maintained by the Chancellor (Section 2590-j(7)), but the UFT may request a different one if it does not approve of the first one (UFT contract, XX). After one year, a substitute teacher has retention rights, and can be fired only after "due process." An individual denied tenure or rated unsatisfactory, or denied an increment by a CSB, is entitled to a hearing before the Chancellor (Section 105a, Bylaws of Board of Education; UFT contract, IV F15c). In addition, CSBs may not make budget modification which would reduce the number of positions of teachers or supervisors without the approval of the Chancellor (Section 2590-i(8)).

Compensation -- This is fixed by the Board of Education in various Board resolutions or in the UFT contract.

Terms and Conditions of Employment -- The following terms of the UFT contract apply to special service and intermediate and junior high school teachers. The basic teacher program consists of no more than 22 teaching periods (of 35), and no fewer than 8 preparation periods and 5 unassigned periods (IV A2b). Maximum class size is 30 (IV A6b). (This means, of course, since the best class has 30 pupils, that most other classes have fewer than 30, and often considerably fewer.) Teachers are relieved from all non-teaching chores except in a few specified cases (IV A2a), and have no administrative assignments (IV A2b). Grievance procedures are spelled out in detail (X), as well as the circumstances under which teachers may undertake various activities in lieu of administrative assignments (V B1) and may visit other schools (IV 14b).

These are only some of the constraints on the CSBs' exercise of personnel powers. The most general one in the UFT contract, Article XV, states that "with respect to matters not covered by this agreement which are proper subjects for collective bargaining," no charges will be made without negotiation with the UFT; and that all existing bylaws, regulations, directives, etc., of the Board of Education affecting salary or working conditions shall continue in force during the term of the agreement, unless change is commanded by law. One may reasonably ask: "What powers are left for the CSBs?"

Obviously they still have some important powers: to appoint teachers to schools; to grant tenure; to determine charges against staff members; etc. It is clear, however, that CSBs do not exercise personnel powers comparable to most other educational authorities in New York State.

Where the statute is ambiguous, the Board of Education has tended to interpret it to retain personnel power which seemed to be given to CSBs.

In one of the first court tests under the Decentralization Act, District 9 challenged the central Board's authority to appoint to the district a number of guidance counselors it had not requested. District 9 eventually won its case, but only after a protracted legal battle.*

In another instance, District 3 denied tenure to a

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* Greenstein v. Barnes, et al. (Community School Board 9), C.A. No. 6101 (S. Ct., Bronx Co., 1971).

junior high school principal. The Board of Education maintained that the CSB could not take such action without a central Board hearing as provided in Section 105a of the Board's bylaws. In March 1973, Supreme Court Justice Peter Quinn, New York County, reversed the Central Board's decision and upheld the original decision of CSB 3 to deny tenure to the principal.*

In both personnel and budget matters, some CSBs have been passive in exercising their rights while others have been quite aggressive. The following paragraphs describe the CSB relationship with three different kinds of personnel -- principals, teachers, and district office staff. As with other areas, CSB experience in personnel matters varies from district to district. Virtually every generalization, therefore, must be qualified with exceptions.

Of all the professionals in the school system, the principal is probably the most directly responsible for the quality of public education. He or she is the local executive whose behavior determines the atmosphere in a school. With decentralization there has been a change in the composition of principals in New York City schools. The proportion of black and Spanish-speaking principals has increased significantly. Decentralization has also brought about a substantial loss of power and autonomy in the principal's

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* In the Matter of Bramwell, Community School Board District 3 v. Board of Education, C.A. No. 19895 (S. Ct., N. Y. Co., filed Sept. 14, 1972).

role. In particular, making the principal accountable to a citizen body (the CSB) has reduced his autonomy.

The changes noted are not attributable entirely to decentralization. A 1971 State law forbade tenure for principals. The Board of Education, claiming that principals are part of management, refused for a long time to engage in collective bargaining with the Council of Supervisors and Administrators. On June 28, 1973, the case was decided against the Board of Education by the State's Public Employees Relations Board. Budget cuts that would have occurred with or without decentralization have also made the principal's job more difficult. Finally, the Chance v. Board of Examiners decision, which permitted assignment only of temporary or acting supervisors, who serve at the discretion of the CSBs, has made the position of new principals insecure.

Many of the principals' current problems are attributable to decentralization. Under the new system they frequently feel surrounded by monitors in the form of CSB members, parents, and the district superintendent. This suggests that, at least in part, decentralization has "reconnected" citizens to the daily policies and activities of public education. Previously, local board members had so little power that they rarely bothered to involve themselves in the daily affairs of individual schools. Now the CSBs have greater power, the parents are more vocal and involved, and the community superintendents are more watchful. For

principals, the result, as one of them put it, is to turn them into "human pincushions." Many principals feel they must focus too much energy on pleasing parents and CSB members, leaving insufficient time for the education of the children. Assistant principals feel even more vulnerable because of the power of individuals or groups to determine their promotion to principal. Under decentralization, the screening committees that generally recommend candidates for principal to the community superintendent and the CSB always include parents and usually teachers or supervisors. Accountability -- either to the CSB, as in the new system, or to the Board of Education, as in the old -- can mean doing what is necessary to get or keep a job. Under either system, accountability may have little to do with the education of children.

Parents and CSB members regard their influence over principals as a positive achievement of benefit to pupils. They believe this power makes principals more responsive to the school population.

Although decentralization was not the cause of the decision in Chance v. Board of Examiners, the Community School District system largely determined its effects. Now that local boards are not restricted to the Board of Examiners' lists in selecting principals and assistant principals, the ethnic composition of school supervisory staffs is changing rapidly. Elementary and middle school principals are still overwhelmingly white (82.6 percent in 1972-73),

but the number of black principals more than tripled between 1969-70 and 1972-73. In 1969-70 -- the last year for appointments under the centralized system -- there were 26 black and 4 Spanish-speaking principals. In 1972-73, the numbers were 118 and 20. The increase in numbers of minority group assistant principals is less dramatic but equally significant.

The increase in black and Puerto Rican classroom teachers has been slower, with little change between 1969-70 and 1971-72. Despite continuous community pressure to hire minority group teachers, the total of those who meet State eligibility requirements is still rather small. Furthermore, relatively few appointments of new teachers have been made in the past two years because of budget constraints. There are, however, informal avenues for increasing the numbers of minority group professionals in the schools. In several districts, teacher vacancies are often filled with per diem teachers who do not have the usual qualifications for regular appointment, or have not yet taken or passed the necessary tests. The use of temporary certificates of competency has also brought more black and Puerto Rican professionals into the schools.

It was hoped that decentralization would hasten the "opening up" of the system to bring "new blood" into leadership positions. This does not seem to have happend. At the central level, a new Chancellor (Harvey Scribner) had difficulty completing his three-year term. His successor (Irving

Anker) is a veteran of the City system. In fact, of seven top level appointments made recently, only one did not come from within the system. The same internal promotion process has been noticeable at the district level. Most supervisors come from within the district, just as most new community superintendents have been selected from among district personnel.

As noted, teachers (and supervisors not affected by the recent elimination of tenure for supervisors) enjoy City-wide tenure. This does not appear to have presented problems except in specific cases. For example, it has sometimes been necessary for districts to "excess" personnel, either because of budget cuts or because of a decision that certain personnel did not represent the wisest expenditure of local funds. During the past three years a number of supervisors of special subjects and guidance programs were declared in excess. There was considerable controversy over whether other districts would be required to accept these supervisors in accordance with City-wide excessing policies. A number of supervisors turned up at headquarters (110 Livingston Street) simply because there was nowhere else for them to go, and application of the existing policies would have led to a central Board-CSB confrontation.

An important aspect of City-wide tenure has been its effect on the automatic transfer provisions of the UFT contract and, to a lesser extent, on similar provisions in the CSA contract. Each year a certain percentage of teachers

may transfer from one school to another without consent of the sending or receiving district, based entirely on seniority. This has resulted in lateral mobility, with experienced teachers transferring from areas of large numbers of poor children -- primarily Blacks and Puerto Ricans -- to middle-class areas. This is resented both by sending districts, which claim that they lose their most able and experienced teachers, and by receiving districts, which claim that they receive large numbers of superannuated teachers.

It has been alleged on several occasions that CSBs have indiscriminately fired tenured teachers. In fact, there is no evidence that the number of tenured teachers dismissed has increased under decentralization. During the first three years of decentralization only eight teachers in CSB schools were dismissed after having achieved tenure. A more substantial number of teachers in elementary or intermediate schools has been denied tenure or dismissed during probationary service. In the last year before decentralization, six teachers in elementary or middle schools were either dismissed during the probationary period or denied tenure. In 1971-72 that number had risen to twenty-six. Yet this increase does not seem sufficient to suggest a CSB harassment of teachers on probation. There has also been an increase in the number of teachers rated unsatisfactory ("U") by district superintendents (80 in 1968-69, 248 in 1971-72). It is perhaps significant that almost half the

teachers rated "U" in 1971-72 were in three districts (9, 13, and 23). All three districts had more than 90 percent black and Puerto Rican student populations, a situation in which conflict with a largely white teaching staff is most likely to occur.

Decentralization has caused a great deal of anxiety among teachers. They are fearful of being replaced and of having their authority in the classroom undermined by "unprofessional" standards. They see that CSBs do occasionally refuse tenure, and they seize upon those instances which may have political overtones. It is not possible to say whether the teachers' anxiety has had a deleterious effect on the education of children.

Publicity given to unique local situations often creates fear among teachers across the City. In two districts (1 and 9) the community superintendents have asked that the Parents Association president countersign the principal's recommendation for approval of placement on a higher step of the salary schedule. Teachers fear that this practice will become widespread and eventually give parents the last word in important personnel decisions. In one Brooklyn school (District 16) a militant black principal is alleged to have caused an 80-percent teacher turnover in eighteen months, and to have replaced white teachers with black per diem teachers. People connected with the school alleged that regularly appointed teachers often left because

of harassment from their new colleagues, parents, and the principal. This situation was reported in the UFT newspaper and cited by teachers all over the City when they were asked what they thought of decentralization.

In some districts the most important personnel developments involve district office staff. Where the district is a low-income area qualifying for special State and Federal funds, the CSBs have had leeway to hire planners and managers for local activities. Community relations personnel -- often paraprofessionals who live in the district -- and program coordinators of various kinds are important in conducting the daily business of the district office. Their ethnicity often reflects the pupil population more exactly than that of the teaching staff.

School personnel have mixed feelings about these district staffs. They are viewed by some as a fiscal drain on district finances, producing little and creating new bureaucratic problems. Many teachers have the impression that funds that would otherwise go for instruction are used to build local educational bureaucracies. In fact, although tax-levy appropriations for district management have been increased, inflation and higher salaries make local purchasing power less than before decentralization. The extra staffing, if any, is usually accomplished with the special non-tax-levy monies.

Some school personnel appreciate the potential for improved educational administration represented by district

staffs. Some principals interviewed feel they now have interested resource people with whom they can confer about new programs.

One question about school decentralization that arises continually is the extent to which personnel appointments, promotions, and dismissals have become politicized. Most interviewees defined "politicize" as replacing educational considerations in personnel decisions with other considerations -- racial, religious, political, personal, etc. Of particular concern is whether ethnicity has replaced competence as the dominant factor in determining a candidate's suitability for the job.

Concern about politicization of the school system often rests on the naive belief that the centralized New York City system was free of politics. This is not the case. For many years, until a reform group was appointed in the early 1960s, the Board of Education maintained a religious balance: three Protestants, three Catholics, and three Jews. Other conditions existed which could hardly be deemed apolitical: all boroughs had to be represented, keeping in mind population differences; it was customary that one woman -- and only one -- be a Board member; beginning with the middle 1950s, one Black -- and only one -- was a member; etc.

At the level of teachers, intermediate supervisors, and principals, it was necessary to pass the tests of the Board

of Examiners to receive a license and then a job. But the school to which one was assigned was often decided through a political process. Similarly, substitute teacher assignments were obtained by methods that had little to do with professional competence. Friendship, political influence, and ethnic ties all played a part.

Political activity was intense with respect to appointive jobs: above the rank of principal (assistant superintendent, associate superintendent, etc.); nonteaching jobs (highly desired); jobs at central headquarters (very prestigious); district headquarters (desirable); in "favored" (middle-class) schools or districts. The word "political" is loosely defined -- it includes social, ethnic, educational, and administrative connotations. For example, appointment of the first Italian American assistant superintendent and of the first black assistant superintendent were both accompanied by rather intense political activities.

Under decentralization, CSBs became the instruments for altering or preserving power relations in the public school system. As new political institutions, the CSBs have tried to consolidate their power through control over jobs. It is this trend that has led to charges that decentralization politicizes education. Examples of personnel actions that give rise to these charges are: the inclination of some districts to favor particular ethnic groups in appointments and promotions; the hiring of local paraprofessionals who

are all minority group people; and disputes over issuance of certificates of competency, under which an individual -- neither regularly licensed by the Board of Examiners nor certified by the State -- may be given a temporary post. Certificates of competency are of particular concern to those who criticize CSB personnel actions, because they constitute a loophole in the civil service regulations. However, several facts about certificates of competency should be noted: first, they were used for many years prior to decentralization; second, the number of individuals serving under certificates is still small compared to the total professional staff; third, they have been used almost entirely to staff special programs funded by State and Federal programs.

In summary, it would appear that CSBs do make political personnel decisions -- certainly more than were made under the old regime. As yet, it is not possible to determine whether or not those decisions have had an adverse or salutary effect on the quality of public education in New York City.

Opinions differ about the influence of CSBs in collective-bargaining negotiations. Members of the CSB committee say they influenced the Board of Education's response to UFT demands, but it is generally believed that CSB representatives did not influence any demand that the UFT was not previously prepared to concede. The fact that UFT President

Albert Shanker had no complaints about CSB participation in the 1972 negotiations may indicate that the group presented little threat to the UFT's demands or strategies. Nevertheless, even though CSB representatives have no formal power in collective bargaining, their participation is important since it gives communities a voice in a critical aspect of decision making.

Personnel issues have been at the heart of the more important conflicts over decentralization -- at both the local and central levels. For example, the late Murray Bergtraum, while a member of the Board of Education, charged that some of the special titles used for "certificates of competency" involved duties that duplicated civil service titles and had apparently been created to circumvent regular personnel policies. He was joined in his complaint by the UFT, the CSA, and various community groups. On the other hand, many shared the views of Mrs. Daisy Thomas, a representative of the New York City Council Against Poverty, who declared: "The certificate of competency has proved to be an exceptionally valuable instrument in bringing minority group professionals into the school system. As a matter of fact, it is just about the only vehicle by which the community school boards are able to hire professionals with special community-oriented skills."* Finally, on March 21, 1973,

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* New York Times, March 22, 1973, p. 62.

the Board of Education, by unanimous vote, passed a resolution curbing the use of such certificates and placing their issuance more firmly within the control of central authority.

Tension over local personnel decisions seems likely to persist, particularly if the pressures for bringing more minority group members into the system continue to accelerate.

Some positions within the school system -- e.g., custodian -- offer especially illuminating analogies for municipal decentralization. Under Section 2590-h(5) of the Decentralization Act, the Chancellor has jurisdiction over all maintenance employees of the City school system, including the custodian. The same section states that the custodian is responsible to the principal of the school. The principal rates the custodian satisfactory or unsatisfactory, but, in accordance with the contract between the Board and the custodians' union, the numerical rating of work, which is the basis for promotion, is provided by the Chancellor's office.

Here, then, is a situation akin to one that might exist under a form of municipal decentralization. If the model of the school custodian were followed, then the district supervisor of particular services would be responsible for the performance of his duties to a district manager, but would remain under the jurisdiction of, say, the Sanitation Commissioner. The number of incidents resulting from such

dual control of custodians has been few, and none was reported by interviewees.

3. Conclusions for School Decentralization

a. CSBs have insufficient power over personnel to enable them to be held fully accountable. The enabling legislation restricts personnel powers sharply; and the collective-bargaining process (in which CSBs have minimal influence) restricts them even further.

b. CSBs have fought energetically to preserve such powers over personnel as they do have and to extend them whenever possible. Most CSB members regard power over personnel as their single most important power.

c. Decentralization has resulted in an apparent increase in ethnic and political factors in hiring for some districts. It has also brought about a marked increase in the percentage of minority group supervisors.

d. There have been more serious disputes about personnel than any other single issue -- between CSBs and the UFT or CSA; between CSBs and teachers; between CSBs and the central Board; and between CSBs and parents. Many disputes have led to lawsuits, boycotts, and other forms of direct action. Part of the difficulty has been the ambiguity of the law and the failure of the Board of Education to revise its personnel procedures and practices in keeping with changed conditions and to train its personnel to deal with the changes.

e. Despite specific protections in the law and in union contracts, the professional staff felt threatened by the changes brought about by decentralization. In many cases, local policies clashed with labor union considerations. As a result, the UFT became stronger than ever, growing in numbers, power, and influence. There have been skirmishes on the teacher labor front during the three years of City-wide decentralization, but there has been no City-wide confrontation or strike.

f. The power of the principal has been reduced and school personnel are generally more accountable to parents and the public.

g. There has been little change in the number of teachers denied tenure, but the number of teachers rated "unsatisfactory" has increased.

h. For school personnel (custodians, teachers of special education classes) in dual lines of authority to CSBs and to central authorities, there have been relatively few problems.

i. Two unique factors -- Judge Mansfield's decision in Chance v. Board of Examiners and the availability of special Federal and State funds -- have given CSBs some opportunities to select local leadership and local workers. It is entirely possible that without these two factors, internal pressures to hire local personnel, combined with an inability to do so, might have led to more serious problems and even confrontations in the new system.

4. Implications for Charter Revision

a. In most organizations, decision makers value power over personnel more than any other power. This is true for CSBs and would probably be true for new local units of government. Decentralization would be meaningless to most people if local units had no reasonable authority over employees under their jurisdiction.

b. It is very difficult to determine precisely what personnel powers the local units ought to have. This determination must evolve from the interaction of political forces as well as other practical considerations. It is clear, however, that a functional relationship exists between accountability and power. If, for example, the collective-bargaining process may result in a restriction of local powers, then local units should be involved in the collective-bargaining process.

c. Decentralization may be expected to increase the expectations of minority groups concerning hiring and promotion. If these desires cannot be satisfied in legitimate ways, serious trouble may ensue. The Charter Commission should give this problem its most serious consideration. It should review civil service examinations with a view to desirable changes. The school experience also suggests that power over personnel may be exercised in a more parochial manner by local units than if appointments and promotions were made by a central authority. It is not clear that this

parochialism would work against the City's general interests. The CSB experience with appointing and promoting personnel suggests that, given the proper conditions, municipal decentralization might substantially change the ethnic composition of the City's work force in some neighborhoods.

This report cannot emphasize too strongly the importance of providing local councils with the personnel powers they consider of primary importance and the legal and financial basis for making those powers meaningful.

d. School decentralization demonstrates that personnel powers of local units can be limited to protect the rights of workers in the system. Even with such protection, however, it is likely that workers will be uneasy. One consequence may be increased reliance on the power of municipal unions. However, this will not necessarily lead to serious labor difficulties.

e. The various administrative regulations and procedures that now apply to employees of the centralized municipal system should be reviewed in the light of changes demanded by a decentralized system. It may be necessary to revamp procedures for appointments, assignments, promotions, transfers, leaves of absence, work schedules, ratings, appeals, and the granting of tenure.

f. Decentralization could result in reduction of the independence of local administrators as a direct result of increased accountability.

g. It is unlikely that local units will carry on "vendettas" against civil service personnel or attempt to discharge any considerable number of employees. Local attention will, however, focus on supervisors, and standards of accountability will become stricter for all employees.

h. The Charter Commission should explore in advance the interrelationships in a decentralized system between local units of government and other City agencies and their personnel.

C. Curriculum

1. Description

Section 2590-e(3) gives to CSBs the power to "determine matters relating to the instruction of students, including the selection of textbooks and other instructional materials." The same section reserves to the Chancellor the right to approve textbooks and materials in advance. The Chancellor also has the power to require annual educational reports from the CSBs (Section 2590-h(10)), and to "promulgate minimum educational standards and curriculum requirements for all schools and programs" (Section 2590-h(8)). The Board of Education shall "approve determinations of the Chancellor relating to course and curriculum requirements" (Section 2590-g(1)). The Board also exercises some power over curriculum through its general right to "determine all policies of the city district" (Section 2590-9). In addition, the State promulgates for all its schools curriculum requirements to which central and local authorities in New York City must adhere.

2. Analysis

The CSBs have significant authority over school curriculum, subject mainly to general State requirements. However, local districts had considerable latitude with respect to curriculum even before decentralization. Some curriculum changes have been undertaken since decentralization, but their impact upon children cannot yet be measured.

Teachers and principals interviewed felt that few educational changes had resulted from decentralization. This reaction may be a function of their general opposition to the concept of "community control." Predictably, those who dislike the present school system will exaggerate its faults and minimize its virtues. Thus proponents of the present system believe that innovation and experimentation are encouraged and made easier under decentralization. It is not clear, however, that the right to do things differently has resulted in actual change or that the change which has occurred is positive.

Virtually the only sources of monies for CSBs to design and effect educational innovations are the special State and Federal funds discussed above -- particularly Title I of the Federal Elementary and Secondary Education Act. Title I programs are intended to enrich the school experiences of educationally disadvantaged students. All but two of the community school districts have a sufficiently high proportion of low-income children so that one or more of their schools benefit from these programs. In some districts, decentralization has had little impact on the ways these funds are used; in others, district personnel give lip service to the use of Title I money for "innovation," but there is little substance behind the new programs; in still other districts there have been some real efforts to introduce new approaches to the solution of educational problems.

In general, districts have tended to equalize the distribution of special funds to individual schools. At the inception of decentralization the Board of Education attempted to force the CSBs to use large chunks of Title I monies for centralized programs. As indicated, District 3 in Manhattan took the case to court and won.

A tendency has existed among some observers of school decentralization to use reading scores as the sole benchmark of the success or failure of the new system. Such an approach is fallacious. Decentralization had been in effect less than two years when the most recent available reading tests were taken -- and arguably the first of those years should not count since the schools were already organized and staffed when CSBs took office in 1970. In addition, many educational authorities maintain that home and community environment are more important to reading ability than the school experience. Finally, changes in the composition of the city's pupil population are clearly a more significant determinant of reading scores than short-term changes in the school system's organization.

In 1955, reading scores for de facto segregated City schools were compiled in a special study. Comparisions with 1972 scores in schools as segregated as the 1955 schools indicate little difference in the degree to which pupils fall below the national average. These data suggest that New York City's system of public education is failing for the same

groups for whom it failed in the 1950s. Today these groups are simply larger and have greater impact on City-wide scores.*

3. Conclusions for School Decentralization

a. If "curriculum" is defined as what actually goes on in the classroom, then there probably has been little change since decentralization. Such change as has taken place can rarely be attributed to decentralization. Nor is there any substantial evidence that there has been more or less educational change under decentralization than there would have been in a centralized system.

b. There are few reliable data indicating a major change in the delivery of educational services or in the level of pupil achievement. Similarly, it is not possible to state that reading scores are better or worse than they would have been under a centralized system.

c. Decentralization has intensified emphasis on

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* In 1973, City and State education authorities reported (New York Times, September 20, 1973) that City pupils had scored gains on recent reading tests. On the Metropolitan Achievement Test (a national test given by the City), the spiral of decline was reversed in 1972 in all grades except Grade 8, where scores remained the same. On the New York State Pupil Evaluation Performance tests, reading results have improved for three years in a row (1970, 1971, 1972). There is no explanation why the 1970 and 1971 State tests showed an improvement for City pupils, and the City tests a decline. By the same token, the changed results in 1970 (improved on the State tests, worsened on the City tests) can hardly be attributed to decentralization, which had just come into existence. Thus the most recent reports, while indicating the possibility of a trend toward improvement, do not provide reliable data by which to evaluate the effect of decentralization upon reading scores.

accountability, which in turn has led to emphasis on improvement in academic areas, especially reading. Thus greater pressure has been exerted at the local level to obtain improvements in reading, sometimes at the expense of other educational objectives. Some critics believe that the quest for better reading results has led to a misdirection of the educational process.

4. Implications for Charter Revision

a. Dislocations caused by changes in school organization and governance have been significant. It is not yet possible to determine whether they will be outweighed by more efficiency, improved services delivery, and better results. This suggests that planners of more widespread municipal decentralization should be extremely cautious about predicting improved service delivery within a few years of major structural change. Planners must work out ways of educating people to accept that reality. Some of those who supported school decentralization most fervently in the late 1960s tried to assure the public that dramatic positive results would soon follow structural change. This was a mistake that should not be repeated.

b. It is unfortunate that the success of school decentralization has been so closely linked to immediate success in one objective -- improvement in reading. This problem suggests that the Charter Commission should articulate not only the precise objectives and goals of its plan

but the relevant measures of success. It would also be helpful if a predetermined instrument for measuring results were established for each function to be decentralized. The benefits of school decentralization may have been obscured by emphasis upon improvement in reading as the measure of success. If other criteria of systemic improvement had been emphasized, opponents of school decentralization might not have been so quick to condemn it. The Charter Commission should strive to prevent a premature evaluation of municipal decentralization based upon a single criterion.

D. Parent and Community Participation

1. Description

The Decentralization Act provides for parent and community participation in the school system in two ways. The basic provisions are those which establish the CSBs and their rights and duties. In addition, Section 2590-d provides that the bylaws of CSBs shall require the establishment of parents' associations or parent-teacher associations in all schools and the distribution to these associations of information about pupil achievement. Board of Education directives require CSBs to consult with parents about matters such as the appointment of principals. More important than these formal requisites of participation were the intentions of community advocates -- as well as many legislators and educational professionals -- to bring significant public (and especially parent) influence to bear on the policies and daily operations of the City's schools. This proposition underlay much of the public debate prior to passage of the law, and many people have emphasized its importance as a determinant of the success of the decentralized system.

2. Analysis

In the dialogue that preceded school decentralization, it was acknowledged that parents were most affected (next to the children themselves) by the failure of the schools. The parents (through their children) are the consumers. There-

fore decentralization forces felt that parents should play an important part in the "reconnection" process.

Under decentralization, however, parents have been relegated to an advisory role with little real power. The Board of Education, over the objections of CSBs, promulgated a policy of rights for parents' associations vis-a-vis the CSBs and school officials.* Yet these "rights" are generally rights of consultation only. Parents' associations have neither the organizational base nor the resources to influence CSB elections as the church groups did in 1970 and the UFT did in 1973. Also, many districts are very large geographically and comprised of communities whose interests and outlook are not necessarily the same -- witness the continuing controversies in District 18 between East Flatbush and Canarsie. Sometimes parents' associations view the CSB as they once viewed the Board of Education -- as a politically motivated bureaucracy with no true interest in the schools or the children. Finally, ethnic differences between the CSBs and the pupil composition of the schools have exacerbated differences between parents' associations and CSBs. For

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* The statement, adopted by the Board of Education on April 21, 1971, was entitled "Parent Associations and the Schools." The Board explained its action by stating, "A major purpose of decentralization is to bring the parents into closer relationships with the school...." The CSBs based their objections not so much on the substantive issues as on their feeling that the Board of Education was usurping their right to deal with their own parents in their own ways. Indeed, many of the CSBs stated that they had already given their own parents' associations more rights than were mandated by the Board of Education.

some districts the result has been continuing controversy.*

The extent and quality of parent and community participation vary widely among districts and according to the type of activity. A general conclusion is possible. Although parent and community participation in school affairs has probably not increased significantly in numbers (except in a few districts), participation is more intense. Those who do become involved usually spend more time at it and exert their influence more directly. Participation through membership in a CSB has already been discussed. This section assesses other types of participation.

One method of measuring parent involvement is to check attendance at parents' association meetings. Attendance has been largely static during the past three years. The extent of participation seems still to be dependent upon factors that have little to do with decentralization, such as the nature of the community, the attitude of the principal, the quality of parent leadership, the existence of special school problems, the geographic size of the school district, and the grade levels included in the school organization. Generally it may be said that attendance at most parents' association meetings is sparse. An attendance of 50-100 is usually considered excellent, except on special occasions --

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* In the spring of 1974 there was a major dispute in District 2 between the Parents' Association and the elected CSB over retention of the District Superintendent.

such as a performance by children or discussion of a highly controversial topic.

It is difficult to measure community participation through attendance at CSB meetings, since many educators attend these meetings, and since there was no comparable predecentralization experience against which to measure present turnouts. Meetings in more active districts regularly attract several hundred people. Less active districts achieve that number only when a controversial issue is under discussion. CSB meetings often engender strong feelings, with those present making impassioned pleas for one position or another.

Whether or not the number of active community people participating in school affairs has increased, the quality of participation is undeniably more intense. In a recent study two professors of political science corroborated this conclusion.* Analyzing decentralization projects in five cities, including New York, they found that decentralization did not greatly enlarge participation in school affairs, but it did produce an elite of activists in each city.

Although parent groups often feel powerless compared with the CSBs, they do seem to be more assertive in working with principals. Several activist parents interviewed said their dealings with supervisors had become much more produc-

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* George La Noue and Bruce Smith, The Politics of School Decentralization, D.C. Heath & Co., Lexington, Mass., 1973.

tive. Both they and the principals know that complaints to the CSB and to the community superintendent are an effective way to get cooperation from school personnel. Principals often resent this outside pressure, nontenured principals in particular. The firing of principals was virtually unheard of before decentralization. Discharges have occurred on a number of occasion since then -- often inspired by parent pressure.

Even where there is little actual parent activity, many school and community people feel that decentralization has brought education closer to citizens. Some of this sense derives from an awareness that anyone can go to a CSB meeting and be heard. (We could not get a man- or woman-in-the-street sample to verify this impression, but teachers and parents interviewed reinforced it.) Community superintendents say that parents take more interest in school matters since decentralization. Community people feel that the appointment of personnel -- especially principals -- who probably could not have been brought into the predecentralization system is due in some measure to the changed role of parents and community. Parent participation in the selection of school principals seems, to active parents, tc represent the most important change. Those who participate on the screening committees take their assignments very seriously.

On occasion, parents have asked for a kind of involvement in the schools that teachers and supervisors considered

inappropriate. In the spring of 1972, Districts 3 and 8 announced a policy of permitting parents to visit classrooms without prior notice. The UFT considered these visits a prelude to parent evaluation of education professionals, and it threatened a teacher walkout. The parent visitation policy did not go into effect.

3. Conclusions for School Decentralization

a. The number of individuals participating in school affairs has increased only slightly, but it is clear that current participation is more intense.

b. Parent and community groups have gained power and confidence in their dealings with professional staff -- particularly with the principals.

c. The grant of powers to CSBs has not resulted in a willingness to share these powers, to any large extent, with parent groups.

d. Under decentralization, the public has received more information about the operations and management of the school system, the achievement of children, budgets, etc.

4. Implications for Charter Revision

a. "Community participation" is the one area where the analogy of education to other municipal services seems most questionable. Parents' feelings of involvement with their children's education is more intense and personal than the usual constituent reaction to sanitation, health, or even police services. Furthermore, there is a historical and growing national movement toward more lay participation

in public education. For some people, school decentralization has represented a strengthening of that tradition and does not, therefore, require unfamiliar commitments. Thus it is difficult to use observations of the school experience to predict the intensity and nature of citizen involvement in other decentralized services.

b. If community residents are invited to participate in municipal policy decisions, those who become active will demand full information about service delivery. Observation of the school experience leads to the conclusion that a few activist parents are able to force the school door open to a point unknown in predecentralization days.

c. The crisis in education that preceded passage of the Decentralization Act may have produced a unique situation for citizen participation which does not exist for municipal decentralization. Before decentralization, public concern about education peaked during the school strikes of 1968. This crisis may have been as crucial in stimulating citizen participation in school affairs as the advent of local school government. Interviewees were divided on this question, with many incapable of distinguishing the possible causes of today's more intense public participation in education. It is possible that general municipal decentralization will not be able to elicit significant community participation without a counterpart to the stimulus provided by the educational crisis of the late 1960s.

V. CONCLUSIONS

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CONCLUSIONS

Generalizations about the three-year-old school decentralization program are dangerous. Each district has its unique problems, and differences are as important as similarities. Also, the school decentralization experience has been so brief that it resists accurate evaluation of its success or failure. Finally, determining whether developments in school policies and practices are attributable to decentralization is difficult when other important changes -- notably budgetary cutbacks -- have occurred during the post-decentralization period.

Despite these many difficulties, some general trends do seem relevant for the Charter Commission:

1) The issue of who will have jobs in the school system has been a continual and dominant concern of local units. This has been felt as a threat by many professional school personnel and has contributed to the strengthening of the UFT. It has also begun to change the character of the school system's personnel, and especially of its local leadership.

2) The political objectives of school decentralization have been at least partly realized. The Decentralization Act did defuse the sensitive issue of school decentralization. As one observer put it, "We now have many

little squeaks instead of one big roar." A number of problems within the City school system have been more sporadic and less concentrated and inflamed. Between 1969 and 1973 there were a number of disputes and confrontations -- teacher strikes, boycotts, racial clashes, and the like. But they did not escalate; nor did the local clashes spread to other districts. They were relatively few and usually brief.

3) Any major Charter or legislative change in the direction of political decentralization of municipal service functions may engender a period of severe stress and conflict. The Charter Commission must face this possibility realistically.

4) Decentralization will be expensive. Therefore any effort to "sell" decentralization on the basis of future economies is likely to be self-defeating.

5) To a considerable extent, the Decentralization Act achieved its major objective of "reconnecting" the schools to the communities, especially in low-income areas. Parents and other community members have greater opportunities for participation in school policy, and the public generally feels that the school system is more accessible.

6) It is not possible to state whether decentralization has contributed to improvements in pupil achievement. Similarly, it is not possible to generalize about the effectiveness of delivery of educational services under decentralization.

7) The viability of decentralization has been enhanced by the availability of special State and Federal funds to start new programs and to hire new personnel. It has also been encouraged by the possibilities opened up by the Mansfield decision, which invalidated the supervisors' examinations and sanctioned CSB hirings of supervisors outside the usual procedures of the Board of Examiners. Without these two conditions, school decentralization might well have been an exercise in frustration for many districts.

8) Local districts generally seem to have exercised their powers responsibly. Newspaper stories have tended to stress CSB problems while overlooking their successes. For example, many school districts across the country have attempted to censor books or deny individual freedoms to teachers. This is not at all uncommon. But when it was done by two or three CSBs such efforts were ascribed to decentralization.

9) The Decentralization Act tended to "open up" the system so that other changes became possible. For example, it is doubtful whether the Mansfield decision would have had the same impact on the selection of supervisors if the system had been centralized.

10) One of the major problems of school decentralization -- perhaps the most important -- has been the retention of powers by the Board of Education. It is perhaps impossible to expect a central authority to divest

itself easily of traditional and substantial powers. Many of the central-local conflicts of the past few years might have been avoided if there had been a carefully planned transition period supervised by a neutral third party. Technical assistance for the CSBs by the Board of Education also might have reduced fiscal and administrative inefficiencies.

Without question, school decentralization has been accompanied by disputes and confrontations. Conflicts between the Board of Education and the CSBs, between factions on CSBs, between CSBs and parent groups, and between unions and CSBs have brought out latent tensions. In a few cases the struggles have contributed to the polarization of neighborhoods. Nevertheless, despite these conflicts, decentralization, for most people, seems to represent an improvement in the school system, largely because the public now has an opportunity to participate in educational policy. There were specific criticisms of decentralization from almost all interviewees. However, when the lay people -- Community School Board members, parent leaders, community leaders, and others -- were asked whether they would prefer a return to the centralized system, almost all of them answered, "No."

APPENDIX A

NEW YORK CITY COMMUNITY SCHOOL DISTRICT SYSTEM: Article 52-A of the State Education Law

EXPLANATORY NOTE

Article 52-A of the Education Law, reproduced herein, constituted one of 13 sections comprising Chapter 330 of the Laws of 1969, popularly referred to as the "Decentralization Law."

There follows below pertinent extracts of Chapter 330, as amended, which do not appear in Article 52-A but are related to the New York City Community School District System. The remaining sections of Chapter 330 were technical amendments and have not been included.

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Sections 11, 12 and 13 of Chapter 330, Laws of 1969, As Amended

§ 11. Interim board of education; chancellor of the city school district of New York. 1. The board of education of the city school district of the city of New York is hereby continued as the interim board of education. Within twenty days after the effective date of this section, five members shall be appointed constituting the interim board, one each appointed by the borough presidents in such city. The certificate of such appointments shall be filed with the secretary of the board of education of such city school district and a copy thereof shall be filed with the commissioner of education of the state of New York.

Source: Board of Education, Education Information Services and Public Relations

1-a. Each member of the interim board of education shall continue in office until his successor is elected and takes office pursuant to paragraph (b) of subdivision one of section twenty-five hundered ninety-b of the education law unless within thirty days of the effective date of this subdivision a borough president of the city of New York appoints a successor to the incumbent member heretofore appointed from that borough, in which event such successor appointee shall take office on July first, nineteen hundred seventy-two.
Added L. 1972, c. 29.

2. The members of the interim board shall be removable for cause by the appointing officer and shall be paid a salary to be fixed by local law. Vacancies shall be filed in the same manner as the original appointment.

3. After article fifty-two-a of the education law takes effect, the interim board shall act as, and have all the powers and duties of, the city board as defined in that article. The interim board shall continue until the elected board of education of such school district takes office as provided in section twenty-five hundred ninety-b of the education law, as added by this act.

4. Notwithstanding any other provision of law, on the effective date of this section the terms of office of the persons then comprising the membership of the board of education of such city school district shall terminate, but they shall continue to serve until the filing of the certificates of the members of the interim board of education as provided in subdivision one of this section.
Amended L. 1969, c. 422.

5. As soon as practicable after they take office the interim board shall employ a chancellor of such city school district by contract, or renewal thereof, for a term to end no later than April thirtieth, nineteen hundred seventy-four. Such chancellor shall be removable for cause by the interim board and the city board of such city school district.
Amended L. 1970, c. 3; L. 1972, c. 29.

6. From and after the commencement of his employment, such chancellor shall have all the powers and duties set forth in article fifty-two-a of the education law (notwithstanding the fact that such article does not take effect at that time) to the extent they are necessary or desirable to enable him to prepare for the transition of such city school district into a community school district system. The chancellor shall exercise such powers and discharge such duties in a manner not inconsistent

with the general policies formulated by, and the specific determination of, the interim board within the scope of their authority. In addition, from and after the date the superintendent of schools of such city school district ceases to perform his powers and duties as such, the chancellor shall also have all such powers and duties.

7. Notwithstanding any other provision of law the terms of office of the persons then comprising the membership of the local school boards of such city school district shall continue until the elected community district boards take office as provided in section twenty-five hundred ninety-b of the education law at which time the terms of office of such members of local school boards shall terminate.

§ 12. Notwithstanding any inconsistent provision of law, the board of education of such city school district and its successor the interim board of education shall have all the powers and duties contained in section twenty-five hundred sixty-four of the education law until article fifty-two-a of such law takes effect.

§ 13. This act shall take effect immediately, except that section four shall take effect July first, nineteen hundred seventy, provided, however, that the provisions of article fifty-two-A of the education law, as added by such section, relating to the election of members of the

boards of education of the community districts of the city school district of the city of New York and the other provisions of paragraph d of subdivision two of section twenty-five hundred ninety-b of the education law, shall take effect immediately.

Amended L. 1969, c. 422; L. 1970, c. 3.

ARTICLE 52-A—NEW YORK CITY COMMUNITY SCHOOL DISTRICT SYSTEM

Sec.

2590. Application of article.
2590-a. Definitions.
2590-b. Continuation of city board and establishment of community districts.
2590-c. Composition of community boards.
2590-d. By-laws of community boards.
2590-e. Powers and duties of community boards.
2590-f. Powers and duties of community superintendents.
2590-g. Powers and duties of the city board.
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2590-i. Budgetary and fiscal processes.
2590-j. Appointment and removal of persons in the teaching and supervisory service.
2590-k. Contracts with city university of New York for administration of high schools.
2590-l. Enforcement of applicable law, regulations and directives; establishment of appeal board.
2590-m. Custody and disbursement of funds.
2590-n. Transitional provisions.

§ 2590. Application of article

This article shall apply to the city school district of the city of New York.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding this section.

§ 2590-a. Definitions

As used in this article, the following terms shall mean:

1. City district. The term "city district" shall mean the city school district of the city of New York.

2. Community district. The term "community district" shall mean a community school district created or to be created within the city district under the provisions of this article.

3. City board. The term "city board" shall mean the board of education of the city district.

4. Community board. The term "community board" shall mean the board of education of a community district.

5. Chancellor. The term "chancellor" shall mean the chancellor of the city district.

6. Community superintendent. The term "community superintendent" shall mean the superintendent of schools of a community district.

7. Parent. The term "parent" shall mean a person in parental relation to a child, as that phrase is defined in subdivision ten of section two of this chapter.

8. Registered voter. The term "registered voter" shall mean an elector of the city of New York under the election law.

Added L.1969, c. 330, § 4; amended L.1970, c. 3, § 1, eff. Jan. 13, 1970.

Historical Note

Subds. 7, 8, added L.1970, c. 3, § 1, eff. Jan. 13, 1970. **Effective date of Article.** See note preceding section 2590.

§ 2590-b. Continuation of city board and establishment of community districts

1. (a) The board of education of the city school district of the city of New York is hereby continued. Such board of education shall con-

sist of seven members, a member to be appointed by each borough president of the city of New York. Each such appointee shall be a resident of the borough for which the borough president appointing him was elected. Two members at large shall be appointed by the mayor of the city of New York. The term of office of each member, except as otherwise provided herein, shall be four years. A vacancy occurring other than by expiration of term of a member appointed by a borough president shall be filled for the unexpired term by appointment by the appropriate borough president of a person who is a resident of such borough. The mayor shall fill vacancies for an unexpired term of any of his appointees. The chairman of the board shall be chosen by the members. The members of the board shall receive such compensation as may be provided by local law.

(b) The members to be appointed by the borough presidents shall be appointed not earlier than April first, nineteen hundred seventy-four and not later than June first, nineteen hundred seventy-four and their successors thereafter.

The mayor of the city of New York shall appoint two members not earlier than April first, nineteen hundred seventy-four and not later than June first, nineteen hundred seventy-four and their successors thereafter.

2. (a) There shall be a community board for each community district created pursuant to this article.

(b) The interim board of education shall prepare a tentative districting plan defining the boundaries of the community districts and the number of members on each community board. No community district shall contain less than fifteen thousand pupils in average daily attendance in the schools under its jurisdiction nor shall the boundaries of any such district cross county lines, provided however, that residents of the county of New York in school district ten as it existed prior to the implementation of this paragraph, shall continue to remain in school district ten as such district is comprised pursuant to the implementation of this paragraph. There shall be no less than thirty nor more than thirty-three community districts.

(c) The tentative districting plan shall be published on November seventeenth, nineteen hundred sixty-nine. Thereafter the interim board of education shall hold a public hearing or hearings thereon not earlier than December first, nineteen hundred sixty-nine nor later than December twelfth, nineteen hundred sixty-nine. The final districting plan shall be published by such interim board of education not later than December twenty-second, nineteen hundred sixty-nine.

(d) The first election of the members of such community boards shall be held on the third Thursday in March, nineteen hundred seventy, and the terms of the members elected at such election shall commence on July first, nineteen hundred seventy, except that prior to such date the members of all community boards so elected, after duly qualifying, including taking and filing their oaths of office, and any community superintendents employed by them prior to July first, nineteen hundred seventy shall have the powers and duties of community boards and community superintendents, respectively, which the interim board of education shall determine to be necessary or appropriate to enable community boards and their community superintendents to make the transition from the city district into the community school district system. The terms of the members elected at such first election shall expire on June thirtieth, nineteen hundred seventy-three.

(e) The interim board of education shall provide for the registration of persons qualified, pursuant to subdivision three of section twenty-five hundred ninety-c, to vote as "registered voters" and "parents", for the nineteen hundred seventy election of members of community boards. Such registration shall commence on January nineteenth and continue each day, except Sunday, up to and including February fourteenth. Nominating petitions for such election shall be filed on or before February twenty-first.

(f) The city board may readjust or alter the districts in such plan only once in any odd year. Not earlier than six months nor later than three months prior to the effective date of such plan, the city board shall hold a public hearing or hearings thereon.

3. The criteria to be observed in dividing the city district into community districts and in determining the number of members on each community board shall include:

(a) taking into account the common and special educational needs of the communities and children involved, transportation facilities, and existing and planned school facilities:

(i) suitable size for efficient policy-making and economic management;

(ii) convenient location for the attendance of pupils and geographic contiguity;

(iii) reasonable number of pupils;

(iv) heterogeneity of pupil population: and

(b) relationship to geographic areas for which the city of New York plans and provides services.

Added L.1969, c. 330, § 4; amended L.1970, c. 3, §§ 2, 3, eff. Jan. 13, 1970; L.1970, c. 7, eff. Feb. 3, 1970, retroactive to Feb. 1, 1970; L.1970, c. 47, eff. March 6, 1970.

As amended L.1971, c. 6; L.1972, c. 29, § 2; L.1973, c. 27, § 1; L.1973, c. 915, § 1.

§ 2590-c. Composition of community boards

1. Each community district shall be governed by a community board to consist of not less than seven nor more than fifteen members to be elected for a term of two years (except as herein provided) and to serve without compensation. Each such board shall select one of its members to serve as chairman.

2. Such members shall be elected at an election conducted by the board of elections in the city of New York to be held on the first Tuesday in May in each odd-numbered year for a term commencing on the first day of July next following.

3. Every registered voter residing in a community district and every parent of a child attending any school under the jurisdiction of the community board of such district who is a citizen of the state, a resident of the city of New York for at least thirty days and at least eighteen years of age shall be eligible to vote at such election for the members of such community board, except that no person may vote more than once or in more than one community district.

4. Every registered voter residing in a community district and every parent of a child attending any school under the jurisdiction of the community board of such district who is a citizen of the state, a resident of the city of New York for at least ninety days prior to the date of election, and at least twenty-one years of age shall be eligible for membership on such community board. No person may serve on more than one community board. A member of a community board shall be ineligible to be employed by the community district of which he is a board member.

5. Each registered voter shall vote at such polling place within his community district as shall be designated by the board of elections in the city of New York. Each person voting as a parent shall vote at such polling place within his community district as shall be designated by the city board. The polls of such elections shall be open between the hours of six o'clock in the forenoon and nine o'clock in the evening on the days of elections.

6. The members of each community board shall be elected by proportional representation in accordance with the following rules:

(1) Nomination by petition. Candidates for community board member shall be nominated by petitions in accordance with regulations, not inconsistent with the provisions of this article, promulgated by the city board, and approved by the board of

elections in the city of New York. Such petitions shall be filed with the board of elections at least four weeks before the election.

(2) Number of signatures. Such nominating petition shall be signed by not fewer than two hundred registered voters residing in such community district, or persons eligible to vote as parents in such community district pursuant to subdivision three of this section.

(3) Separate petitions and signers. Each candidate shall be nominated by a separate petition and no elector shall sign more than one such petition. Should an elector sign more than one such petition, his signature shall be void except upon the petition first signed.

(4) Nonpartisan petitions. No candidate shall be identified by political party or other organizational affiliation on the nominating petitions.

(5) Paper ballots. Community board members shall be voted for, in accordance with the instructions provided in paragraph seven, on paper ballots on which the candidates are listed by name only. The ballots shall conform to the provisions of the election law for paper ballots, so far as applicable, except as to size and as hereinafter provided. The ballots shall contain a square for voting before each candidate's name.

(6) Order of names on ballot. The names of the candidates shall be printed in the alphabetical order of their surnames, except that they shall be rotated by polling places by transposing the first named candidate to the bottom of the order at each succeeding polling place; so that each name shall appear first and in each other position in an equal number, as nearly as possible, of the polling places.

(7) Instructions to voters. There shall be no indication on the ballot of a definite number of candidates to be voted for. The instructions to voters shall read as follows:

INSTRUCTIONS

Mark Your Choices with NUMBERS Only.

(Do NOT use X Marks.)

Put the number 1 in the square opposite the name of your first choice.

Put the number 2 opposite your second choice, the number 3 opposite your third choice, and so on. You may mark as many choices as you please.

Do not put the same number opposite more than one name.

To vote for a person whose name is not printed on this ballot, write his name on a blank line under the names of the candidates and put a number in the square opposite to show which choice you wish to give him.

If you tear or deface or wrongly mark this ballot, draw lines across its face to prevent its being used, return it and obtain another.

(8) Central count. Prior to every election at which community board members are to be elected, the board of elections shall designate a central counting place for each community district where the ballots shall be brought together and counted publicly; shall appoint for each district a board of two competent persons, to act as directors of the count for such district; shall employ a sufficient staff of assistants for each district, and shall make suitable arrangements for the counting and recording of the ballots, subject to the provisions of this article. The board of elections shall prepare and provide all necessary forms and equipment.

(9) Assembling ballots. As soon as the polls have closed, the election officials assigned by the board of elections at each polling place shall seal the ballot boxes without opening them and shall send them at once, as the board of elections may direct, to the central counting place for the district with a record of the number of ballots for community board member which have been voted in their polling place.

(10) Checking number of ballots. At the central counting place the number of ballots for community board member found in each ballot box shall be recorded and compared with the record sent from the corresponding polling place. The records thus compared shall be made available to the public with notations explaining any corrections or changes made therein. Discrepancies which cannot be reconciled shall be shown on the record. All ballots found in the ballot boxes which bear no evidence of having been improperly cast shall be accepted.

(11) Sorting of ballots. Ballots shall be sorted by polling places in an order determined by lot.

(12) Rules for validity. If a ballot does not clearly show which candidate the voter prefers to all others or if it contains the signature of the voter, it shall be held as invalid. Every ballot not thus invalid shall be counted according to the intent of the voter so far as that can be clearly ascertained, whether marked according to the instructions printed on it or not. No ballot shall be held invalid because it is marked in ink or pencil differ-

ent from the one supplied at the polling place, or because the names of candidates thereon have been stricken out by the voter. Any cross mark or check mark shall be disregarded, except that a single cross mark or check mark on a ballot on which no number one appears shall be considered equivalent to the number one. If the consecutive numerical order of the numbers on a ballot is broken by the omission of one or more numbers, the smallest number marked shall be taken to indicate the voter's first choice, the next smallest his second, and so on, without regard to the number or numbers omitted.

(13) Count of first choices. At the beginning of the count for each district the ballots shall be sorted and counted according to the first choices marked on them. The ballots shall be so credited to the candidates of their choice in the order of polling places chosen by lot as specified in paragraph eleven of this subdivision. The number of valid ballots cast for each candidate as first choice in each polling place and the total number of valid ballots for each candidate and for all candidates shall be determined and recorded.

(14) Single transferable vote. Each candidate shall be credited with one vote for every ballot that is sorted to him as first choice or transferred to him as hereinafter provided, and no ballot shall ever be credited to more than one candidate at the same time.

(15) Quota sufficient to elect. The quota of votes sufficient to elect a community board member shall be determined by dividing the total number of valid ballots cast in the community district by one more than the number of members to be elected for the district and adding one to the result, disregarding fractions. This is the smallest number of ballots which could be received separately by each of as many candidates as are to be elected but not by one more.

(16) Election of candidates with quotas. All candidates whose first-choice ballots equal or exceed the quota shall be declared elected.

(17) Transfer of surplus ballots. All of the surplus ballots in excess of the quota of each candidate so elected shall be transferred from him, each to the unelected candidate indicated on it as next choice among such candidates. The ballots to be so transferred as surplus ballots shall be those last received by the candidate in the count of first choices which show a clear next choice for an unelected candidate. All ballots which show no such clear next choice shall be left to the credit of the candidate of their first choice. If more than one candidate has first-choice

ballots in excess of the quota, the surplus ballots of the candidate with most ballots shall be transferred first, then those of the candidate with next most ballots, and so on.

(18) Election of candidates during transfers. Whenever during any transfer of ballots, at any stage of the counting, the number of ballots credited to a candidate becomes equal to the quota, he shall be declared elected and no ballots in excess of the quota shall be transferred to him. Any transferred ballots in excess of the quota which show a next choice for such candidate shall be transferred further at once, each to the next subsequent choice on it for a continuing candidate. A "continuing candidate" is a candidate not yet elected or defeated. If such a ballot shows no such further choice, it shall be set aside as "exhausted".

(19) Defeat of lowest candidates. After the count of first choices and the transfer of all surplus ballots, if any, the candidates having fewest votes to their credit shall be successively defeated and their ballots transferred as hereinafter provided. The one candidate with the fewest votes shall be declared defeated first. If at this point, two or more of the candidates with the next fewest votes, including any such candidates whose names have been written in, have together fewer votes than the candidate next higher in number of votes, they may all be declared defeated together unless this would reduce the number of undefeated candidates below the number to be elected.

(20) Transfer of ballots from defeated candidates. All the ballots of the candidates thus defeated shall be transferred, each to the candidate indicated on it as next choice among the continuing candidates. If a ballot shows no such further choice, it shall be set aside as exhausted. If the same choice is marked for more than one candidate, it shall be disregarded except as to continuing candidates, but if the next choice for a continuing candidate is marked for more than one continuing candidate, the ballots shall be set aside as exhausted.

(21) Defeat of candidate then lowest. When all the ballots of the candidate or candidates first defeated have been transferred, the one candidate who is then lowest on the poll shall be declared defeated and all his ballots transferred in the same way.

(22) Successive defeats and transfers of ballots. Thereupon the candidate who is then lowest on the poll shall be declared defeated and all his ballots similarly transferred. The lowest candidates shall be declared defeated one at a time and all their ballots transferred until the election is at an end as hereinafter provided.

(23) Order of transfer. When ballots are being transferred from defeated candidates, they shall be transferred in the reverse order to that in which they were credited to the candidate whose ballots are being transferred, except that if no quota can possibly be completed for another candidate during the transfer they may be transferred in any order.

(24) Ties. In deciding any tie a candidate shall be treated as having more votes than another if he was credited with more votes at the end of the last preceding transfer or sorting of ballots at which the numbers of their votes were different. Any tie not thus decided shall be decided by lot.

(25) Election ended when all quotas are completed. If at any time as many candidates as are to be elected have received the quota, the other candidates shall all be declared defeated and the election shall be at an end. Any transfer that is in progress when the last candidate is elected may be completed for the record.

(26) Last candidates elected even if quotas are not completed. If at any time all ballots of any defeated candidates have been transferred and it is impossible to defeat another candidate without reducing the continuing candidates below the number still to be elected, all the continuing candidates shall be declared elected and the election shall be at an end.

(27) Correction of errors. If at any time after the first sorting of the ballots a ballot is found to have been misplaced, it shall be credited to the candidate who should have been credited with it at that stage of the counting or set aside as exhausted if that would have been the proper disposition of it at that stage, and any changes in the disposition of the ballots composing completed quotas made necessary by the correction shall also be made forthwith. If the number of misplaced ballots found indicates that the list of continuing candidates may be incorrect, so much of the sorting and counting as may be required to correct the error shall be done over again before the count proceeds.

(28) Record of count. A record of the count shall be kept in such form as to show, after each sorting or transfer of ballots, the number thereby credited to each candidate, the number thereby found exhausted, the total for each candidate, the total found exhausted, and the total number of valid ballots found by adding the totals of all candidates and the total found exhausted.

(29) Record and disposition of ballots. Every ballot that is transferred from one candidate to another shall be stamped or marked so as to show all the candidates to whom it is successively

credited during the entire course of the count. If in correcting an error, or in recounting ballots, any ballots are re-sorted or re-transferred, every such ballot shall be made to take the same course that it took in the original count unless the correction of an error requires its taking a different course.

(30) Ineligible candidates. If a candidate dies or is officially determined to be ineligible before the counting of the ballots is completed, all choices for such candidate shall be disregarded and every ballot which would otherwise have been counted for him shall be counted for the next choice thereon, if any, instead.

(31) Applicability of the election law. The provisions of the election law with respect to nomination of candidates, declination of nominations, filling of vacancies in nominations, notices to candidates, objections to petitions, rulings thereon, judicial proceedings and all other matters so far as applicable shall govern the election of community board members by proportional representation except in the method of counting the votes and except as provision is otherwise made in this article.

(32) Supplementary regulations. Administrative regulations for the conduct of elections by proportional representation, not inconsistent with the provisions of this article, may be made by the city board and, subject to any such regulation, by the board of elections.

(33) Rights of candidates. At each election any candidate for community board members shall be entitled, upon written application to the board of elections at least five days before said election:

(a) To exercise all the rights granted by the election law to a political party in regard to the appointment of watchers and challengers for the polls. Such watchers and challengers may exercise their respective rights at the polls until the ballots have been sent to the central counting place and may accompany the ballot boxes to the central counting place.

(b) To appoint two representatives at the count in the central counting place, who shall have full authority to move anywhere within the central counting quarters for the district, to inspect all activities of the count without interfering therewith and to exercise all rights conferred on watchers under the election law.

(c) To appoint two observers at the central counting place, who shall be given facilities for keeping in full view all ballots outside of containers and all containers of ballots at all times when such ballots are not being sorted or counted, from the time

when the first ballots arrive until all ballots have been placed in containers and removed for safekeeping at the end of the count.

The board of elections shall permit substitutions for persons originally appointed.

(34) Public attendance at count. The candidates, representatives of the press and other media and, so far as may be consistent with good order and convenience, the public shall be afforded every facility for being present and witnessing the count.

a. In addition to the conditions enumerated in the public officers law creating a vacancy, a member of a community board who refuses or neglects to attend three successive meetings of his board of which he is duly notified, without rendering a good and valid excuse therefor to the other members of his board, vacates his office by refusal to serve.

b. Vacancies shall be filled for the unexpired term by the community board.

Added L.1969, c. 330, § 4; amended L.1969, c. 422, § 1; L.1970, c. 3, §§ 4, 5, eff. Jan. 13, 1970; L.1970, c. 83, eff. Mar. 18, 1970. As amended L.1973, c. 209, § 2.

§ 2590–d. By-laws of community boards

Each community board shall adopt and may amend by-laws, including but not limited to the following requirements:

(1) that there shall be a parents' association or a parent-teachers' association in each school under its jurisdiction;

(2) that the board, the community superintendent and the principal of each school shall have regular communication with all parents' associations and parent-teachers' associations within the community district to the end that such associations are provided with full factual information pertaining to matters of pupil achievement, including but not limited to: annual reading scores, comparison of the achievement of pupils in comparable grades and schools, as well as the record of achievement of the same children as they progress through the school; provided, however, that such record and scores shall not be disclosed in a manner which will identify individual pupils.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding section 2590.

§ 2590–e. Powers and duties of community boards

Each community board shall have all the powers and duties, vested by law in, or duly delegated to, the local school board districts and the board of education of the city district on the effective date of this article, not inconsistent with the provisions of this article and the policies established by the city board, with respect to the control and operation of all pre-kindergarten, nursery, kindergarten, elementary, intermediate and junior high schools and programs in connection therewith in the community district. The foregoing shall not be limited by the enumeration of the following, each community board shall have the power and duty to:

1. a. Employ a community superintendent by contract for a term of not less than two nor more than four years, subject to removal for cause, at a salary to be fixed within the budgetary

allocation therefor, subject to the provisions of subdivision two of section twenty-five hundred ninety-j of this article.

b. delegate such of its administrative and ministerial powers and duties as it deems appropriate to its community superintendent and to modify or rescind any power and duty so delegated.

2. appoint, define the duties, assign, promote and discharge all its employees and fix their compensation and terms and conditions of employment, not inconsistent with the provisions of this article or any applicable collective negotiation agreement.

3. determine matters relating to the instruction of students, including the selection of textbooks and other instructional materials; provided, however, that such textbooks and other instructional materials shall first have been approved by the chancellor

4. generally manage and operate the schools and other facilities under its jurisdiction.

5. make repairs to all school buildings and other buildings and sites under its jurisdiction, except that the total expenditures for such repairs by any community board shall not exceed two hundred fifty thousand dollars in any fiscal year. Expenditures for repairs in excess of this limit shall be authorized only by the chancellor. Such repairs involving the expenditure of more than twenty-five hundred dollars shall be obtained by the community district only by contracts on public letting founded on sealed bids to the lowest responsible bidder.

6. operate social centers, and recreational and extracurricular programs.

7. operate cafeteria or restaurant services for pupils and teachers and for the use by the community for school related functions and activities and to furnish meals to the elderly, sixty years of age or older, of the district meeting standards of low income as established by the commissioner. Such utilization shall be subject to the approval of the board of education. Charges shall be sufficient to meet the direct cost of preparing and serving such meals, reducible by available reimbursements.

8. maintain discipline in the schools and programs under its jurisdiction.

9. appoint teacher-aides for the schools and programs under its jurisdiction within the budgetary allocation therefor.

10. employ or retain counsel subject to the powers and duties of the corporation counsel of the city of New York to be its attorney and counsel pursuant to subdivision a of section three hundred ninety-four of the New York city charter; provided, however, that in actions or proceedings between community boards or between a community board and the city board, each community board may be represented by its own counsel.

11. submit, after public hearing, proposals to the chancellor for construction, remodeling or enlargement of schools under its jurisdiction.

12. submit proposals directly to the mayor, the board of estimate, the council and the city planning commission of the city of New York in connection with the proposed capital budget.

13. select proposed sites for schools under its jurisdiction for submission to the New York city site selection board.

14. be consulted by the chancellor with respect to determining the requirements for each construction, remodeling or enlargement project in a school under its jurisdiction.

15. place qualified architects on a panel established by the city board on the basis of qualifications determined by it after consultation with the community boards.

16. select the architect for construction, remodeling or enlargement projects relating to a school under its jurisdiction from several architects proposed by the city board the architect selected being instructed by him to work closely with the community board.

17. review preliminary architectural renderings and plans and recommend approval, rejection or modification of them by the chancellor.

18. be consulted by the chancellor in the establishment of rules, regulations and standards governing the qualification of bidders on projects exceeding twenty-five thousand dollars.

19. employ or assign personnel to assist the chancellor in expediting the processes by which approval of construction, remodeling and enlargement projects relating to schools under its jurisdiction is obtained.

Added L.1969, c. 330, § 4. As amended L.1972, c. 772, § 5; L.1973, c. 412, § 6.

Historical Note

Effective date of Article. See note preceding section 2590.

§ 2590–f. Powers and duties of community superintendents

1. Except as otherwise expressly provided in this article, under the direction of his community board, each community superintendent shall have:

a. the same powers and duties with respect to the schools and programs under the jurisdiction of his community board as the superintendent of schools of the city district of the city of New York had on the effective date of this article; and

b. the power to delegate any of his powers and duties to such subordinate officers or employees of his community board as he deems appropriate and to modify or rescind any power and duty so delegated.

2. In exercising such powers and duties each community superintendent shall comply with all applicable provisions of law, bylaws, rules or regulations, directives or agreements of the city board, the chancellor and his community board and with the educational and operational policies established by the city board and his community board.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding section 2590.

§ 2590-g. Powers and duties of the city board

The city board except as otherwise provided herein shall have all the powers and duties the interim board of education of the city district had on the effective date of this article, and shall determine all policies of the city district.

In addition the city board shall have power and duty to:

1. Approve determinations of the chancellor relating to course and curriculum requirements.

2. Approve determinations of the chancellor relating to estimates for operating and capital purposes of all the schools and programs in the city district including all community districts.

3. Approve determinations of the chancellor relating to site selection.

4. Hold public hearings on any matter relating to the educational welfare of the city school district or other matters within the scope of its responsibilities whenever required to do so by law, or whenever in its judgment the public interest will be served.

5. For all purposes, be the "government" or "public employer" of all persons appointed or assigned by the city board or the community boards.

6. Be the government or public employer of all persons appointed or assigned by the city board and the community boards for purposes of article fourteen of the civil service law; provided, however they shall establish formal procedures under which the community boards will be consulted with respect to

collective negotiations by the chancellor with employee representatives on matters which affect their interests. Any contract or contracts between the city board and any employee organization in effect on the effective date of this article shall continue to be binding on the city board and the community boards and any contracts entered into by it as the government or public employer thereafter shall be binding on the city board and the community boards.

7. Cause the chancellor to prepare an annual report of the affairs of the city school system.

8. Require each community board to make such number of periodic reports as may be necessary to accomplish the purposes of this chapter.

9. At any time subsequent to three years after the effective date of this article, transfer in its discretion any academic, vocational or comprehensive high school to the community board in whose community district such high school is located, whenever it determines the public interest will be served.

10. (a) Serve as the appeal board as provided in section twenty-five hundred ninety-e of this article. The chairman of the board shall serve as chief executive officer of such appeal board and shall have authority to direct that any appeal be considered and determined by a panel of three members designated by him.

(b) When sitting as an appeal board, it shall have such powers and duties with respect to the hearing and determination of appeals as the commissioner of education shall, by regulation, determine. The commissioner may assign to the appeal board on a temporary or permanent basis such personnel of the education department as he deems appropriate. The panel designated by the chairman shall have authority to stay temporarily, pending final determination by the appeal board:

(i) enforcement of an order of the chancellor from which the community board is appealing; and

(ii) any action of the community board inconsistent with such order.

Upon final determination of an appeal under this section, the appeal board shall issue an order either:

(i) affirming the order of the chancellor; or

(ii) modifying or reversing such order if it is determined to be arbitrary or capricious or contrary to law, regulation or sound educational policy.

(c) The chancellor or a community board or a removed or suspended community board member, if aggrieved by the final determination of the appeal board, may, within fifteen days of issuance of such determination appeal to the commissioner of education. Such appeal shall be determined by the commissioner solely upon the written record made before the appeal board, together with such memoranda or briefs as counsel for the parties may submit. Oral argument shall be permitted only in the discretion of the commissioner.

11. Provide for training and orientation sessions for new community board members to be held prior to the commencement of the term of office of such members.

12. (a) Establish and maintain special high schools which shall include the present high schools known as:

The Bronx High School of Science, Stuyvesant High School, Brooklyn Technical High School and Fiorello H. LaGuardia High School of Music and the Arts and such further high schools which the city board may designate from time to time.

(b) Admissions to the Bronx High School of Science, Stuyvesant High School and Brooklyn Technical High School and such similar further special high schools which may be established shall be solely and exclusively by taking a competitive, objective and scholastic achievement examination, which shall be open to each and every child in the city of New York in either the eighth or ninth year of study, without regard to any school district wherein the child may reside. No candidate may be admitted to a special high school unless he has successfully achieved a score above the cut-off score for the openings in the school for which he has taken the examination. The cut-off score shall be determined by arranging the scores of all candidates who took the examination and who then commit themselves to attend the school in descending order from the highest score and counting down to the score of the first candidate beyond the number of openings available.

(c) Candidates for admission to the Fiorello H. LaGuardia High School of Music and the Arts, and other schools which may be established with similar programs in the arts, shall be required to pass competitive examinations in music and/or the arts in addition to presenting evidence of satisfactory achievement.

(d) The special schools shall be permitted to maintain a discovery program to give disadvantaged students of demonstrated high potential an opportunity to try the special high school program without in any manner interfering with the academic level of these schools. A student may be considered for the discovery program provided the student: (1) be one of those who takes the regular entrance examination but scores below the cut-off score, (2) is certified by his local school as disadvantaged, (3) is recommended by his local school as having high potential for the special high school program, and (4) attends and then passes a summer preparatory program administered by the special high

school, demonstrating thereby his ability to successfully cope with the special high school program. All students recommended by their local school for such a discovery program are to be arranged on a list according to their entrance examination scores, in descending order, from the highest to the lowest. Each special high school will then consider candidates in turn, starting at the top of the list for that school. A candidate reached for consideration on the basis of his examination score will be accepted for admission to the discovery program only if his previous school record is satisfactory.

Added L.1969, c. 330, § 4; amended L.1970, c. 3, § 6, eff. Jan. 13, 1970.

As amended L.1971, c. 1212, § 1, eff. Jan. 1, 1972.

§ 2590-h. Powers and duties of chancellor

The office of chancellor of the city district is hereby continued. It shall be filled by a person employed by the city board by contract for a term of not less than two, nor more than four years, subject to removal for cause. The chancellor shall receive a salary to be fixed by the city board within the budgetary allocation therefor. He shall exercise all his powers and duties in a manner not inconsistent with the policies of the city board. He shall have all the powers and duties as the superintendent of schools of the city district, except as otherwise provided herein. He shall also have the power and duty to:

1. Control and operate:

(a) academic and vocational senior high schools until such time as the same may be transferred to the jurisdiction of appropriate community boards pursuant to this article;

(b) all specialized senior high schools;

(c) all special education programs and services conducted pursuant to this chapter prior to the effective date of this article;

(d) any city-wide programs which regularly provide services to a substantial number of persons from more than one community district, provided, however, that a community district may also operate within its district programs which provide similar services otherwise authorized by this article.

2. Establish, control and operate new schools or programs of the types specified in subdivision one of this section, or to discontinue any such schools and programs as he may determine; provided, however, that he shall consult with the affected community board before:

(a) substantially expanding or reducing such an existing school or program within a community district;

(b) initially utilizing a community district school or facility for such a school or program;

(c) instituting any new program within a community district.

3. Subject to the approval of the city board, develop a plan to provide for the establishment of comprehensive high schools within the city district so that every community district shall have available to its graduates further education in a comprehensive high school. Such plan may provide for the conversion of academic and vocational high schools and may be amended or modified from time to time.

4. Appoint teacher-aides for the schools and programs under his jurisdiction within the budgetary allocation therefor.

5. Retain jurisdiction over all employees who are required in connection with the performance of duties with respect to the design, construction, operation and maintenance of all school buildings in the city school district. Such employees shall have all rights accorded them under the provisions of the civil service law, including manner of appointment, classification, promotion, transfer and removal including an opportunity to be heard provided, however, that each custodian shall be responsible for the performance of his duties to the principal of the school who shall be responsible to the district superintendent.

6. Employ or retain counsel subject to the powers and duties of the corporation counsel of the city of New York to be his attorney and counsel pursuant to subdivision a of section three hundred ninety-four of the New York city charter; provided, however, that in actions or proceedings between the city board and one or more community boards, it shall be represented by the corporation counsel of the city of New York.

7. To continue existing voluntary programs or to establish new programs under which students may choose to attend a public school in another community district.

8. Promulgate minimum educational standards and curriculum requirements for all schools and programs throughout the city district, and to examine and evaluate periodically all such schools and programs with respect to

(i) maintenance of such educational standards and curriculum requirements, and

(ii) evaluation of the educational effectiveness of such schools and programs; in a manner not inconsistent with the policies of the city board.

9. Furnish community boards and the city board periodically with the results of such examinations and evaluations and to make the same public.

10. Require each community board to make an annual report covering all matters relating to schools under its jurisdiction including, but not limited to, the evaluation of the educational effectiveness of such schools and programs connected therewith.

11. Require such community board to make such number of periodic reports as may be necessary to accomplish the purposes of this chapter.

12. Repealed.

13. Perform the following functions throughout the city district; provided, however, that the chancellor and any community board may agree that any such function may be appropriately performed by the community board with respect to the schools and programs under its jurisdiction:

(a) Technical assistance to community boards;

(b) Such warehouse space on a regional basis as he determines to be necessary or appropriate after consultation with the community boards;

(c) Purchasing services on a city-wide, regional or community district basis.

14. Develop and furnish pre-service and in-service training programs for employees throughout the city district.

15. Establish a parents' association or a parent-teachers' association in each school under its jurisdiction to the extent practicable.

16. Promulgate such rules and regulations as he may determine to be necessary or convenient to accomplish the purposes of this act, not inconsistent with the policies of the city board.

17. Possess those described in section twenty-five hundred fifty-four of this chapter, the exercise of which shall be in a manner not inconsistent with the policies of the city board.

18. Possess those contained in section nine hundred twelve of this chapter and those provisions of article fifteen thereof which relate to non-public schools, those contained in sections five

hundred twenty-two and five hundred twenty-four of the New York city charter and those contained in article seventy-three of this chapter, the exercise of which shall be in a manner not inconsistent with the policies of the city board.

19. Delegate any of his powers and duties to such subordinate officers or employees as he deems appropriate and to modify or rescind any power and duty so delegated.

20. Ensure compliance with qualifications established for all personnel employed in the city district.

21. Perform the functions of the bureau of audit throughout the city district.

22. Establish uniform procedures for record keeping, accounting and reporting throughout the city district, including pupil record keeping, accounting and reporting.

Added L.1969, c. 330, § 4; amended L.1970, c. 3, § 7, eff. Jan. 13, 1970. As amended L.1973, c. 661, § 1.

Historical Note

Subd. 12, which related to training sessions for community board members, was repealed L.1970, c. 3, § 7, eff. Jan. 13, 1970. Subject matter is now covered by subd. 11 of section 2590-g.

Effective date of Article. See note preceding section 2590.

§ 2590-i. Budgetary and fiscal processes

1. The chancellor shall annually advise the community boards with respect to the form and content of the budget requests and accompanying fiscal estimates required to be submitted by the mayor of the city of New York for the next ensuing fiscal year, together with such additional information as he may require.

2. Each community board, after public hearings, on the estimates prepared by its community superintendent shall, on such date as the chancellor shall direct, submit to the chancellor estimates of the total sum of money which such community board deems necessary for the performance of its functions during the next fiscal year of the city.

3. The chancellor, under the direction of the city board shall prepare the estimates for the schools and programs under the jurisdiction of the city board. In consultation with the community superintendents acting under the direction of their respective community boards, he shall also recommend increases, decreases, or modifications of the community boards' estimates. He shall prepare the estimates for the entire city district on

such modified basis for adoption by city board, after consultation with the community boards and after a public hearing.

4. On such date as the mayor shall direct, the city board shall submit to the mayor:

(a) estimates, as adopted, of the total sum of money which it deems necessary for the operation of the city district (other than functions to be financed from funds provided for in the capital budget of the city) during the next fiscal year of the city, together with the estimates submitted by the community boards, as originally submitted and as modified pursuant to subdivision three of this section;

(b) estimates of the amount to be received as a result of the apportionment of moneys payable from the state in such fiscal year; and

(c) estimates of the amount to be received for school system expenditures by the city district in such fiscal year from sources other than appropriations of city funds or appropriations or other provisions of funds in the capital budget of the city or apportionment of moneys from the state payable in such fiscal year.

5. All estimates submitted by the city board shall be prepared in the manner prescribed by the New York city charter for submission of departmental estimates for current expenses to the mayor and shall set forth the total amounts proposed for programs or activities of the community boards in units of appropriation separate from those set forth for programs or activities operated by the city board; provided, however, that nothing shall prevent the city board from including in such estimates a unit or units of appropriation to be allocated to it in its discretion, to community boards pursuant to subdivision ten of this section to finance innovative programs or activities by such community boards.

6. In acting on the proposed units of appropriation for programs or activities of community boards, the board of estimate and city council of the city of New York may, subject to the veto of the mayor, increase or decrease the total amount of each such unit of appropriation but, notwithstanding any provision of the New York city charter or any other law to the contrary, they shall not have power to add any other unit of appropriation for one or more community boards.

§ 2590-i. Budgetary and fiscal processes

[See main volume for text of 1 to 6]

7. (a) Upon the final adoption of the appropriation for the city district in each year, the city board through the chancellor shall allocate among the community boards the funds appropriated in the units of appropriation for the programs or activities of such boards on the basis of objective formulae established annually by the city board, after considering the recommendation of the chancellor and after consultation with the community boards and the mayor of the city of New York, such formulae shall reflect the relative educational needs of the community districts to the maximum extent feasible.

(b) Not later than thirty days after the amount of such funds becomes determined by adoption of the budget pursuant to subdivision six, by allocation pursuant to subdivisions ten, eleven, fourteen and fifteen of this section, or otherwise, the chancellor shall transmit to each community board a statement enumerating the federal, state, city and private funds which have been allocated thereunder to such community board for its programs.

(c) At the same time, the chancellor shall transmit to the community boards a statement of the allocation of the balance of such funds to the several programs administered by him and the city board including the distinct amounts assigned to each category of schools and programs set forth in section twenty-five hundred ninety-i and the amount allocated for the operation of the city board, his office and the other administrative bureaus and divisions thereof.

8. The city board through the chancellor in consultation with the community boards and subject to the approval of the mayor of the city of New York, shall develop and implement procedures for the establishment and subsequent modification of detailed schedules relating to the administration of appropriated funds allocated to the community boards on the basis of the formulae referred to in subdivision seven of this section. Such procedures, to the maximum extent feasible, shall be consistent with sound fiscal practices, permit each community board to develop such detailed schedules and to make changes in them in the course of a fiscal year without prior approval of the city board, the chancellor or the director of the budget, under appropriate general rules not inconsistent with applicable provisions of law, by-laws, rules and regulations, directives and agreements, and the educational and operational policies of the city board, which rules shall:

(a) ensure consistency with minimum curriculum requirements and other policies required by or in accordance with applicable law and agreements; and

(b) prevent:

(i) the incurrence of liabilities or expenses in excess of the amount available therefor or otherwise not authorized by law; or

(ii) the use of unencumbered balances of appropriations of a fiscal year to assume obligations, including the initiation of programs and the employment of personnel, which may require larger appropriations in a subsequent fiscal year.

Modifications in such final approved detailed schedule shall require the same approvals as the final detailed schedule. No such modification in such schedules shall be made which will transfer funds available for personal services of members of the teaching and supervisory staffs, unless approved by the chancellor.

9. Special estimates to meet extraordinary expenses of emergencies which may arise in the course of a fiscal year may be submitted to the chancellor by any community board and, pursuant to subdivision six of section twenty-five hundred seventy-six of this chapter, the chancellor may, in its discretion, submit

such special estimates to the mayor of the city of New York. The chancellor may also submit special estimates to the mayor in connection with the schools and programs under his jurisdiction.

10. Notwithstanding any provisions of law to the contrary, any moneys appropriated to or authorized for expenditure by the city board including moneys so appropriated to finance innovative programs or activities by community boards (but other than moneys so appropriated for the exercise of powers or duties reserved to the city board) may be allocated by the chancellor to any community board. Allocations made pursuant to this subdivision shall be based on the needs of the recipient community boards, considered in conjunction with the needs of the schools and programs under the jurisdiction of the city board, in the case of moneys appropriated for innovative programs or activities, the relative merit of the programs or activities proposed by the respective community boards.

11. The chancellor shall perform all functions in connection with article seventy-three of this chapter; provided that the chancellor shall allocate to the community boards the state funds apportioned to the city district pursuant to article seventy-three, less the amount of such funds necessary to enable the chancellor to carry out his responsibilities, on the basis of an objective formula established by the city board annually, after consultation with the community boards and the mayor, which formula shall reflect the relative educational needs of the community districts to the maximum extent feasible.

12. The chancellor shall perform all functions in connection with sections twenty-five hundred seventy-six, twenty-five hundred seventy-seven, twenty-five hundred seventy-nine, twenty-five hundred eighty-one, twenty-five hundred eighty-two, twenty-five hundred eighty-three and twenty-five hundred eighty-four of this chapter.

13. The city board through the chancellor shall perform all functions in connection with the capital budget as provided in chapter nine of the charter of the city of New York, except as otherwise provided herein.

14. With respect to special, federal, state and private funds, each community board may:

(a) contract for and receive funds to be transmitted to the city board and disbursed through the chancellor. No special funds may be used as a means of bringing about the elimination of existing personnel lines, titles or employees. Community boards may use budget funds allocated and resources obtained

within the scope of existing law and contractual obligations to design programs of educational excellence tailored to the needs and peculiar characteristics of the district;

(b) enter into contracts necessary or convenient to the discharge of the powers and duties with the city, state and federal governments, private foundations, agencies and individuals, the city board and other community boards subject to the approval of the chancellor;

(c) in the case of federal or state funds not allocated to the city district on a formula basis, to apply to the funding agency, as a local educational agency, and to accept any funds granted or apportioned in this connection for its use and account, provided, however, that as to federal funds available to areas affected by federal activities pursuant to public law eight hundred seventy-four, community boards shall not be considered local educational agencies and shall have no power to apply directly to the funding agency but such funds shall be reallocated to community boards by the chancellor in accordance with a formula determined by the city board as provided in subdivision ten of this section; and

(d) in the case of special funds allocated to the city district on a formula basis, to submit proposals to the chancellor for a review as to form only and prompt transmittal to the funding agency; provided, however, that in the case of such special funds community boards shall not be considered local educational agencies; and provided further that the total amount of such proposals submitted by any community board shall not exceed the amount of an apportionment made by the chancellor on the basis of a formula determined by the city board, after considering the recommendation of the chancellor and after consultation with community boards and the mayor, which formula reflects the same educational and economic factors as the formula for apportionment of such special funds to the city district; and provided further that each community board shall consult fully with non-public school authorities on a continuing basis with respect to any of such special funds applicable to non-public school programs and students subject to the power and duty of the city board through the chancellor to ensure that applicable provisions of state and federal law and regulations with respect to programs for students in attendance at non-public schools throughout the city district shall be carried out.

15. With respect to special, federal, state and private funds, the chancellor shall provide community boards with information about the availability of such funds and furnish technical assist-

ance with respect to the preparation of proposals, record keeping and the administration of such programs.

16. On or before October first of each year, the city board shall submit to the commissioner, in the form to be prescribed by him, the annual budget for the city district for the current fiscal year.

Added L.1969, c. 330, § 4.
As amended L.1971, c. 546, eff. June 17, 1971; L.1971, c. 1003, eff. July 2, 1971.

§ 2590-j. Appointment and removal of persons in the teaching and supervisory service

1. Persons in the teaching and supervisory service in all schools in the city system shall be appointed as prescribed by this section.

2. The chancellor shall promulgate minimum education and experience requirements for all teaching and supervisory service positions which shall not be less than minimum state requirements for certification, and with the approval of the city board shall create and abolish the titles of all positions in the teaching and supervisory service.

3. (a) (1) The board of examiners shall prepare and administer objective examinations to determine the merit and fitness of all candidates for teaching and supervisory service positions, other than the positions of chancellor, executive deputy city superintendent, deputy city superintendent, assistant city superintendent and community superintendent. Examinations for teaching positions may consist in part of the National Teachers Examination administered by the Educational Testing Service of Princeton, New Jersey.

(2) The board of examiners shall cause a verbatim record of all interview tests to be made, and shall furnish a transcript thereof to each failing candidate requesting the same at a reasonable fee.

(b) (1) Examinations for teaching positions shall be open competitive.

(2) Examinations for all supervisory service positions shall be open qualifying.

(3) The board of examiners may establish an eligible list for any class of positions for which it finds inadequate numbers of qualified persons available for recruitment. Such examinations

shall, so far as practicable, be construed and rated so as to be equivalent. Candidates who pass any such examination and who are otherwise qualified shall be placed on such list in the rank corresponding to their grade. The period of eligibility of successful candidates for certification and appointment from such lists as a result of any such examination shall be fixed by the chancellor, but, except as a list may reach an announced terminal date, such period shall not be less than one year. Subject to such conditions as the chancellor may prescribe, a candidate may take more than one such examination; provided, that no such candidate shall be listed with more than one rank on any one such list.

(c) All lists of eligibles for supervisory or administrative positions which are in existence and which were placed in abeyance, and appointments from which were prohibited by a temporary restraining order of the United States District Court on the twenty-third day of July nineteen hundred seventy-one, or the preliminary injunction of the said court dated September seventeenth, nineteen hundred seventy-one, continuing such prohibition, and of which lists those that are scheduled to expire prior to March first, nineteen hundred seventy-four, shall be deemed extended to March first, nineteen hundred seventy-four, as though such were the date on which such lists were originally scheduled to terminate or expire.

4. (a) The chancellor shall appoint and assign teachers for all schools and programs under the jurisdiction of the city board from persons on competitive eligible lists.

(b) The chancellor shall appoint and assign all supervisory personnel for all schools and programs under the jurisdiction of the city board from persons on qualifying eligible lists.

(c) Each community board shall appoint teachers for all schools and programs under its jurisdiction who are assigned to the district by the chancellor from competitive eligible lists. Insofar as practicable the chancellor, when making such assignments shall give effect to the requests for assignment of specific persons by the community board. The community board shall appoint such teachers to schools within such district within thirty days if such appointment is to be effective on a date subsequent thereto and within three days if such appointment is to be effective immediately.

(d) Each community board shall appoint and assign all supervisory personnel for all schools and programs under its jurisdiction from persons on qualifying eligible lists.

(e) All persons on an existing competitive eligible list for elementary school principal shall be appointed to such position prior to April first, nineteen hundred seventy.

(f) All future eligible lists established pursuant to this section shall remain in force and effect for a period of four years, and no appointments shall be made from any eligible list unless every such list promulgated prior thereto shall be exhausted or expired, whichever first occurs.

5. (a) The chancellor shall cause a comprehensive reading examination to be administered to all pupils in all schools under the jurisdiction of the community districts annually. Prior to October first of every year each school shall be ranked in order of the percentage of pupils reading at or above grade level as determined by such examination, in accordance with rules to be promulgated by the chancellor.

(b) If the ranking of a school under the jurisdiction of a community district falls in the lower forty-five percent of the ranking of all such schools, as provided in paragraph (a), the community board of such school (hereinafter called an eligible school) may appoint teachers to such school in conformity with this subdivision, any other provision of this section or chapter notwithstanding, provided, that in the first year during which this paragraph is operative, only a school in the lower forty percent shall be an eligible school.

(c) The board of each eligible school may between October first in the year in which the foregoing examination was administered and the following May first, appoint any person a teacher in such school for the school year commencing in September of the year following such examination without regard to any competitive eligibility lists established pursuant to this section, provided that such person, will on the effective date of such appointment, have the education and experience qualifications for certification as a teacher pursuant to article sixty-one and shall have:

(i) passed a qualifying examination to be prepared and administered by the board of examiners, such examination to be equivalent in all respects to examinations given by such board pursuant to subdivision three, or be on an existing competitive eligible list for such position; or

(ii) passed the National Teachers Examination within the past four years at a pass mark equivalent to the average pass mark required of teachers during the prior year by the five largest cities in the United States which use the National Teachers Examination as a qualification, as determined by the chancellor. This paragraph shall not restrict the right of the chancellor to establish appropriate medical requirements for all teachers. The chancellor shall cause the National Teachers Examination to be offered at reasonable intervals at one or more cities in the commonwealth of Puerto Rico.

(d) Such board may waive its rights under paragraph (c) and elect to appoint teachers under paragraph (d) of subdivision four.

6. If a vacancy exists for a teaching position in any community district for which there are no names on any appropriate eligible list in force, such district may appoint and assign any person to fill such position who complies with paragraph (c) of subdivision five.

6-a. (a) Notwithstanding any other provision of law, any person who has served continuously as a substitute teacher in the schools of the city system since the fourteenth day of September, nineteen hundred seventy shall be appointed to probationary service in the school he is serving in as of June first, nineteen hundred seventy-two effective September sixth, nineteen hundred seventy-two provided a vacancy exists in the school for the school year commencing September nineteen hundred seventy-two and provided his name appears on an appropriate eligible list in existence on June first, nineteen hundred seventy-two without regard to his relative standing on such list, and thereafter he shall be subject to all the existing provisions of law and negotiated agreements in the same manner as any other appointee.

(b) Notwithstanding any other provision of law, persons awaiting appointment from eligible lists shall be assigned and appointed in ranked order by the city board on September sixth, nineteen hundred seventy-two to those vacancies which were in existence on June first, nineteen hundred seventy-two and continued to be in existence on September sixth, nineteen hundred seventy-two.

7. Each community board shall, subject to the provisions of paragraph (e) herein, have authority and responsibility with regard to trials of charges against any members of the teaching or supervisory service staffs of the schools within its jurisdiction as follows:

(a) No such employee who has served the full and appropriate probationary period prescribed by, or in accordance with law, shall be found guilty of any charges except after a hearing and by the affirmative vote of a majority of all the members of the community board. The community board shall have the right to impose a penalty on an employee, consisting of a reprimand, a fine, suspension for a fixed time without pay, or dismissal, or transfer within the district or any one or more of them.

(b) Charges may be initiated by the community superintendent against any such employee for any of the following offenses:

(1) Unauthorized absence from duty or excessive lateness;

(2) Neglect of duty;

(3) Conduct unbecoming his position, or conduct prejudicial to the good order, efficiency or discipline of the service;

(4) Incompetent or inefficient service;

(5) A violation of the by-laws, rules or regulations of the city board, chancellor, or the community board; or

(6) Any substantial cause that renders the employee unfit to perform his obligations properly to the service.

(c) The community superintendent, in advance of the filing of charges and specifications, shall inform the employee accused and the community board of the nature of the complaint. No charges shall be brought more than six months after the occurrence of, the discovery thereof, or the date when discovery should have occurred upon the exercise of due diligence, of the alleged incompetency or misconduct except where the charge is of misconduct constituting a crime when committed.

(d) The employee charged shall be given an opportunity to be heard, in person or by counsel, including the right to receive a copy of the charges and specifications, and shall be entitled to cross-examine opposing witnesses and to call and examine witnesses in his own behalf.

(e) Upon the service of a copy of the charges upon such employee and the filing thereof with the community board, the com-

munity superintendent may recommend to the chancellor the suspension of any such employee. If the chancellor shall determine that the nature of the charge requires the immediate removal of the employee from his assigned duties, he may suspend such employee for a period not exceeding ninety days pending hearing and determination of charges, provided however, that such employee shall be entitled to receive full compensation during the period of suspension. In case the employee is acquitted, he shall be restored to his position.

(f) The community board on receipt of a notice of charges by the community superintendent against any employee shall appoint one or more trial examiners. The assigned trial examiner or examiners shall be selected from a panel of competent persons maintained by the chancellor. The trial examiner shall administer the oath to all appropriate witnesses. A trial examiner shall have the power to subpoena witnesses, papers and records. The provisions of the civil practice law and rules in relation to enforcing obedience to a subpoena lawfully issued by a judge, arbitrator, referee or other person in a matter not arising in an action in a court of record apply to a subpoena issued by a trial examiner as authorized by this subdivision. The report of any such trial examiner shall be subject to final action by the community board. The community board may reject, confirm or modify the report of the trial examiner or examiners. A vote of the majority of all members of the board shall be necessary for a finding of guilt and to impose a penalty or punishment. The employee may appeal to the city board from any adverse determination or penalty imposed by such community board. The city board after reviewing the record in the case, shall have the power to make a final determination in the case subject to any provision for arbitration that may exist in agreements between the city board and the organization representing such employee, not inconsistent with applicable law. Nothing contained in this section shall preclude an aggrieved employee from seeking a review of such final determination by the commissioner or the courts as prescribed by law.

8. The community superintendent may transfer members of the teaching and supervisory service without their consent within the district for the following reasons only:

(a) Disciplinary action pursuant to subdivision seven of this section,

(b) Excess staff in a specific school,

(c) To staff a new school, or

(d) To fill a vacancy in another school within the district; provided, however, (i) that such transfers shall be made in inverse order of seniority in the school from which made, (ii) that the school to which the person is transferred has a higher number of vacant positions subsequent to such transfer that the school from which transferred, (iii) that there is no appropriate eligible list for such position, (iv) that no other qualified person within the district makes application to fill such position, and (v) such vacancy has existed for at least two weeks.

In exercising the power granted in paragraphs (b) and (c), hereof the community superintendent shall comply with all collective negotiation agreements.

Added L.1969, c. 330, § 4.

As amended L.1971, c. 790; L.1972, c. 144, § 1; L.1972, c. 162, § 1; L.1972, c. 718, § 1; L.1973, c. 34, § 1; L.1973, c. 147, § 1.

§ 2590-k. Contracts with city university of New York for administration of high schools

1. The city board and the city university of New York are hereby authorized and empowered to enter into a contract or contracts whereby such university will administer not more than five high schools under the jurisdiction of the city board selected from among those schools which exhibit the greatest degree of disadvantage as measured by such factors as the proportion of students earning general diplomas, the percentage of students reading below grade level, the attrition rate, the proportion of students residing in officially designated poverty areas, and similar measures.

2. Such contract may provide for the delegation by the city board of any of its functions, powers, and duties or of a community board, or those of the chancellor or a community superintendent, in connection with the operation of such high schools, to the city university of New York, except the power to appoint or terminate the employment of any employee. The terms and conditions of employment shall continue to remain under the jurisdiction of the city board.

3. The provisions of section sixty-two hundred nine of this chapter with respect to the apportionment of public school mon-

eys shall be applicable to the high schools included in any such contract or contracts.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding section 2590.

Library References

Schools and School Districts ⇐78 et seq.

C.J.S. Schools and School Districts § 270 et seq.

§ 2590-*l*. Enforcement of applicable law, regulations and directives; establishment of appeal board

1. If, in the judgment of the chancellor any community board fails to comply with any applicable provisions of law, by-laws, rules or regulations, directives and agreements, and after efforts at conciliation with such community board have failed, he may issue an order requiring the community board to cease its improper conduct or to take required action and consistent with the provisions of this article and the educational and operational policies of the city board, may enforce that order by the use of appropriate means, including:

(a) supersession of the community board by the chancellor or a trustee appointed by him with respect to those powers and duties of such community board deemed necessary to ensure compliance with the order; and

(b) suspension or removal of the community board or any member or members thereof.

2. The community board or any suspended or removed member thereof may, within fifteen days after issuance of such order, file an appeal with the city board acting as an appeal board pursuant to subdivision ten of section twenty-five hundred ninety-g.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding section 2590.

Library References

Schools and School Districts ⇐78(5).

C.J.S. Schools and School Districts §§ 115, 116.

§ 2590-m. Custody and disbursement of funds

1. Public moneys apportioned to the city district by the state and all funds raised or collected by the authorities of such city for school purposes or to be used by the city board or by any community board for any purpose authorized by this chapter, or any other funds belonging to the city district or a community district and received from any source whatsoever for school purposes, shall be paid into the city treasury and shall be credited to the city board or to the respective community boards.

2. The fund so received into such treasury shall be kept separate and distinct from any other funds received therein. The officer having charge thereof shall give such additional security for the safe custody thereof as the corporate authorities of the city of New York shall require.

3. a. Funds credited to the city board shall be disbursed upon written orders of the director of finance of the city signed by the chancellor or such other officer or officers as the city board authorize. Funds credited to a community board shall be disbursed upon written orders of the director of finance of the city signed by the community superintendent and such other officer or officers as such board may authorize.

b. If an auditor shall have been appointed by the city board or any community board, such orders shall be signed by such auditor; provided, however, that the city board and any such board may in addition require the signature of such other officer or officers as it may by resolution direct.

c. Orders issued under this subdivision shall specify the purpose for which they are drawn and the person to whom they are payable.

4. a. It shall be unlawful for the director of finance of the city to permit any funds placed in his custody under the provisions of this section to be used for any purpose other than that for which they are lawfully authorized.

b. Such funds shall be paid out only on audit of the city board through the chancellor or the community board to which such funds are credited, except as otherwise provided in subdivision five of this section.

c. Payments from such funds shall be made only by checks signed by the director of finance of the city and payable to the person entitled thereto and countersigned by the comptroller of the city of New York.

5. Fixed salaries, principal of and interest on indebtedness and amounts becoming due upon lawful contracts for periods ex-

ceeding one year may be disbursed without prior audit by the city board or the board to which such funds are credited.

6. The city board and each board referred to in this section shall make, in addition to such classification of its funds as it desires for its own use and information, such further classification of the funds credited to it and of the disbursement thereof as the comptroller of the city of New York shall require; provided that the classification of funds by community boards shall be in accordance with the altered schedules developed pursuant to subdivision eight of section twenty-five hundred ninety-i of this article. The city board and community boards shall furnish such data in relation to such funds and their disbursements as the comptroller of the city of New York shall require.

7. The comptroller of the city of New York shall audit the accounts of the city board and each community board.

Added L.1969, c. 330, § 4.

Historical Note

Effective date of Article. See note preceding section 2590.

Library References

Schools and School Districts ⇐92(1) et seq.

C.J.S. Schools and School Districts §§ 331-335, 337, 338.

§ 2590-n. Transitional provisions

1. Subject to the provisions of this article, within sixty days after the effective date of this article, the interim board of education through the chancellor shall transfer to each community board all city district employees serving in or in connection with the schools and programs which are subject to the jurisdiction of such community board and shall retain all employees serving in or in connection with the schools aid programs which are continuing under its jurisdiction. The interim board through the chancellor shall also either transfer to appropriate community boards or retain:

(a) such teaching and supervisory personnel who shall be unassigned at such time; and

(b) any city district employees not transferred pursuant to other provisions of this subdivision.

2. All employees having tenure shall be transferred to such community boards or retained by the interim board as provided in this section without further examination or qualification and

without diminution of pay or rank in accordance with the provisions of this section.

3. All probationary personnel transferred to community boards or retained in accordance with the provisions of this section shall receive full credit for any probationary service rendered prior to the transfer date and shall be so transferred without diminution of pay or rank.

4. If, at any time after the effective date of this article, the city board or any community board employs as a member of the teaching or supervisory staff in the schools and programs under its jurisdiction a person previously employed by the interim board, the city board or a board within the city district, such person shall be granted:

(a) tenure on the basis of tenure in the city district prior to the transfer date; or

(b) prior service credit toward the achievement of tenure on the basis of probationary service in the city district immediately prior to the transfer date if such service continued without substantial interruption until the date of the new employment. When the city board or a community board employs a member of the teaching or supervisory staff who received tenure from or had probationary service for another board after the transfer date, the employing board shall grant such member tenure or prior service credit.

5. The chancellor shall cause to be transmitted to each community board copies of such books, papers and records of the interim board pertaining to the powers and duties transferred to the community board as he determines to be appropriate.

6. For the purpose of succession to all powers and duties transferred to community boards, each community board shall be deemed to constitute a continuation of the city board, and not a different agency or authority.

7. Any business or other matter undertaken or commenced by the interim board or the city board pertaining to or connected with the powers and duties transferred to community boards, and pending on the effective date of this article, may be conducted and completed by such community boards in the same manner, under the same terms and conditions and with the same effect as if conducted and completed by the interim board or the city board.

8. Whenever the city board, the chancellor or the city superintendent is referred to or designated in any provisions of law, by-laws, rules or regulations, directives, agreements, orders or

other documents pertaining to the powers and duties transferred to community boards pursuant to the provisions of this article, such reference or designation shall be deemed a reference to or designation of the appropriate community board or its community superintendent, respectively, except as otherwise provided in this article. Any provision of the New York city charter or of this chapter relating to the removal of members of the city board shall also apply with the same force and effect to members of each community board.

9. Except as otherwise required under the provisions of this article:

(a) nothing contained herein shall affect or impair any action done or right or remedy accruing, accrued or acquired, or any penalty, forfeiture or punishment incurred, prior to the transfer date, under or by virtue of any provision of this chapter or any other statute then in force, but the same may be asserted and enforced, prosecuted or inflicted as fully and to the same extent as if this article had not taken effect; and

(b) any provision of law prescribing any requirements or conditions with respect to the making of claims or bring actions or proceedings against the city board shall also apply with the same force and effect to each community board.

10. In any case, when, but for the enactment of this subdivision, any community board would be liable in tort to any person, such community board shall not be liable therefor and the city board shall be liable therefor in the place and stead of such community board and any claim, action or proceeding which could, but for the enactment of this subdivision, have been asserted or brought against a community board by reason of such tort, may instead be asserted or brought against the city board.

11. Funds to meet expenses of community boards incurred prior to July first, nineteen hundred seventy may be made available to such boards:

(a) by the interim board or the city board through the chancellor in his discretion, from funds appropriated or authorized for expenditures by them other than funds provided for in the capital budget of the city of New York; and

(b) in the discretion of such city, by appropriation of funds in the city's expense budget or modification of such budget.

Added L.1969, c. 330, § 4.

APPENDIX B

COMMUNITY SCHOOL BOARD ELECTIONS IN NEW YORK CITY

A Report
to the
New York State
Commissioner of Education
by
Max J. Rubin
Special Advisor to the Commissioner

December, 1973

December 7, 1973

Honorable Ewald B. Nyquist
Commissioner of Education
State Education Department
Albany, New York 12224

Dear Commissioner Nyquist:

On September 12, 1973, you appointed me to conduct hearings and make a study of the Community School Board Elections in New York City, following "wide-spread reports of irregularities and deficiencies" in the May 1 elections. You asked me to identify the difficulties encountered by the voters and the candidates "both on election day and in the period for registration and nomination which preceded it," and to recommend "such changes in the law and procedures as may be necessary to ensure orderly elections in the future."

Public hearings were held at the Bar Association of the City of New York from October 9 to October 30. Sixty-eight witnesses testified and 1971 pages of testimony were taken. The witnesses came from 19 of the 32 districts. They included representatives of the Board of Education, the Board of Elections, the United Federation of Teachers, civic, community and parent organizations which had been involved in the May 1 elections, as well as legal and research consultants.

I also conferred with representatives of the Police Department, present and former officials of the Board of Elections, including the Chief of the Special Unit which had been set up for the Community School Board elections, representatives of the Board of Education, an official of the New York Municipal League, and representatives of several of the concerned civic and parent groups.

To all who participated in these proceedings and provided the benefit of their experience and thinking, I am grateful.

There are inherent and basic flaws in the structure governing these elections. I believe a substantial overhaul is necessary, but also that it should be limited to that which is truly necessary. To design an entirely new blueprint would generate more problems than it could solve.

It will be noted that, with respect to several important problems, there is no precise remedy that can be demonstrated to be the only possible solution. In several of the issues, any recommendation has pros and cons, and alternatives will be discussed. My recommendation will be the adoption of that course which, on balance, seems most likely to be effective.

I am indebted to Counsel for the Department, Robert D. Stone, and his staff for their guidance and research; to Dr. Sterling Keyes and Dr. Robert Foland of the Department who were helpful throughout this study. I express much appreciation also to Ms. Gloria Dapper and Ms. Barbara Carter who performed valuable service in the analysis of the record and in the preparation of this report.

Transmitted herewith are my report and recommendations, together with the stenographic transcript of the hearings and an appendix consisting of exhibits and material submitted to me.

Sincerely,
Max J. Rubin
Special Advisor to the
Commissioner

COMMUNITY SCHOOL BOARD ELECTIONS IN NEW YORK CITY

A REPORT TO THE NEW YORK STATE COMMISSIONER OF EDUCATION

by
Max J. Rubin
Special Advisor to the Commissioner

AN OVERVIEW

To understand the complexities of New York City's Community School Board elections, it is necessary to understand the complexities of the setting in which they were held.

The legislative intent of the 1969 Decentralization Law dividing the city's mammoth school system into 30 to 33 school districts was to encourage community involvement in the educational system by creating popularly elected boards for each district and by mandating parent associations in each school. A system of proportional representation was included in the legislation as well as the enfranchisement of non-citizen parents in order to enhance minority representation and community involvement. The first election was held in 1970, the second on May 1, 1973.

The Community Boards are responsible for the education of a total of more than 840,000 pupils in 772 elementary and junior high schools. Even with decentralization, the size of the local districts remains a formidable factor contributing to complexity. In total population, the districts range from 109,357 (District 23) to 576,000 (District 2). Indeed, only four cities in the State have more residents than the *smallest* district, which is about the size of Albany. Two-thirds of the districts are larger than Yonkers; the largest is bigger than Buffalo.

And perhaps even more important than numbers is diversity. Besides blacks and Spanish-surnamed people, who comprise approximately 36 percent of the city's population, there are sizeable enough minorities from other ethnic backgrounds to require voting informa-

tion to be presented in 10 different languages. The type of diversity varies from area to area within the city. Nor is it confined to racial and ethnic minorities. There are religious and ideological minorities within the districts as well.

Demographic statistics for the districts tend to change. Constant movement renders many figures outdated to some extent, and the figures for Puerto Ricans, where available, are only estimates at best. According to the 1970 census, Puerto Ricans form a sizeable minority (25%–48%) in six districts, blacks are in the majority in four, while 10 districts are 90 percent white.

However, the electorate of many districts does not reflect the ethnic make-up of the schools. In District 29, for example, while two-thirds of the students are black, only two-fifths of the general population are black. In 21 districts, the majority of pupils are black and Spanish-surnamed. In only 10 districts do blacks and Puerto Ricans form a majority of the overall population.

But even where the schools reflect the general population, the majority of potential voters tends to be white. Citywide, it has been estimated that approximately 29 percent of the Puerto Ricans and blacks are of voting age, while 67 percent of the whites are.

Complicating the matter further is the fact that New York's districts differ from all other districts of comparable size in the rest of the State in one important respect. In the other large cities, the school district boundary is coterminous with the city boundary. Cities like Buffalo and Rochester have major newspapers and radio and television stations which cover local news. But most of the Community Districts in New York City are without such coverage.

Although there are 63 weekly newspapers in the five boroughs which purport to cover neighborhood news, most of them are of the shopping news variety, which come and go. Only a few are well-established, reliable reporters of news on the local level. In addition, there are five black newspapers in the city, seven Jewish newspapers, and two Spanish papers, all of which would have an interest in covering news of the Community School Boards, albeit from a special point of view.

The seven television stations do not concentrate on neighborhood news. All of them broadcast signals that reach out to Connecticut and New Jersey so that the greater metropolitan area is their prime audience. Similarly, the radio stations, by and large, beam their coverage to the large metropolitan area.

Thus the media which might be interested in providing information about local school districts either have other primary concerns or are

directing their efforts toward certain segments of the electorate. The major newspapers, radio and television stations provide an overall point of view, but they cannot be expected to cover in detail events which are of interest only to small segments of the city. The newspapers and electronic media are geared to citywide, national and international coverage and cannot be expected to devote the space and attention needed to cover the affairs of 32 community school districts.

New York is marked by factionalism and polarization of various kinds. In the city as a whole, and in certain of the community school districts in particular, this factionalism and polarization was intensified during the 1968 teachers' strike, leaving animosities and hostilities not yet healed. Unfortunately, parents' groups and teachers in many of the districts are in opposing camps. Many parents feel that not only the teachers but the " establishment " oppose their participation in school affairs. Teachers feel that their professional rights will be undermined if hostile Community Boards take power. In addition, contests have been waged between public school parents and parochial school parents and between representatives of local poverty agencies and other community leaders.

It is against this backdrop of disparity, diversity, and distrust that the examination of the Community School Board elections must be made.

THE 1973 ELECTIONS

On Tuesday, May 1, 1973, 370,204 voters (out of three and one-half million registered), cast their votes for 841 candidates to fill the 288 seats on the nine-member Community School Boards. The overall turnout of 10 percent was lower than the 14 percent turnout for the 1970 Community Board elections.

The turnout in New York was not evenly spread. Six districts had a markedly higher turnout than in the first election, 14 districts had a lower turnout and the rest were about the same. As with school elections in the rest of the nation, voters often do not go to the polls unless a burning issue is at stake, and, as with other school elections, it can only be surmised that the young voters tended to stay away from the polls. In 1970, there had been boycotts in four districts. Apparently, the absence of boycotts in 1973 made relatively little difference in the turnout. Only one of the four districts had a significantly larger vote in 1973 than in 1970.

The first important question is whether the May 1 election was well-conducted. To be sure, the testimony before me was unsworn

and most of it came from aggrieved and disappointed people. But testimony also came from several independent and respected civic organizations which have a deep concern for an effective and orderly electoral process. The words " confusion," " chaos," " disaster " and " incompetence " were used again and again by witnesses describing what happened to them and others they observed on election day.

According to the Director of the Public Education Association, voters felt the election was a " farce or worse.". " The PEA on election day received literally hundreds of phone calls . . . The volume of them was so enormous and so overwhelming that it caused us to band together . . . and try to get an inquiry . . . It is clear from newspaper accounts, personal experience and the volume of phone calls . . . that the election day administration was deeply and irretrievably flawed."

According to an executive of the Citizens Union, an experienced expert, it " was one of the most miserably run elections it has ever been my misfortune to encounter."

I wish to state quickly that in the view of this observer, and in my own view, the then President of the Board of Elections and the Chief of its Special Unit did all within their power to cope with the problems that confronted them. Undoubtedly there were members of their staff who also tried hard to meet the many problems involved in the election.

It should also be noted that several of the witnesses testified to the efforts made by the Public Education Association to disseminate pertinent information and to stimulate registration and voting. Ultimately a large quantity of press releases and informational materials was printed by the board of education, but there is little evidence that these materials were effective. The Public Education Association did print posters and with the Community School System Law Project distributed a " candidates manual " which many candidates found to be their only source of technical information. Unfortunately,none of these commendable efforts succeeded in producing orderly elections.

There is no need to burden the body of this report with a detailed recapitulation of the testimony which is being submitted herewith. Even discounting the testimony of some disappointed candidates and others with self-interest, it is clear that irregularities took place on a widespread basis.

The election in District 17 was invalidated. Although the elections in four other districts were challenged, the courts permitted them to stand. I understand that the challenge in another district is scheduled for early trial.

Irregularities occurred at every step of the procedure, from the petitioning process through the counting of the ballots. Complaints from witnesses came from all five boroughs. With respect to petitions, it was said that the procedures were too highly technical and the instructions issued were of minimal assistance to politically unsophisticated candidates.

There were complaints of failure to maintain records in an orderly manner and registration cards needed to validate petitioners signatures were, in some instances, missing. There was testimony that original petitions were permitted to be taken from the offices of the Board of Elections to be copied by challengers without accompanying election officials. It was charged that one employee of the Board of Elections, in a position to verify petition signatures, was a candidate. There was testimony of failure to number parent registration forms and failure to safeguard transmission of parent validated forms from the principals' offices to the Board of Elections offices.

There was criticism of the insufficiency of time allowed initially for registration and a paucity of public information and publicity with respect to registration. Apparently, the PEA produced the only posters telling people when they could register, which posters the Board of Education urged the schools to post.

Although registration in the schools was scheduled from 8 a.m. to 8:30 p.m., registrars often left at 3 p.m. when the schools closed, because they did not feel secure in empty buildings. Registration tables in schools were located in obscure spots; not enough interpreters were hired by school principals where needed; street registration with the use of deputized volunteers had poor organization; volunteers had difficulty learning how to be deputized; prospective registrants had great difficulty in learning how and where to register.

With respect to campaigning, the criticisms were that there was no central place to get information on candidates or procedures; that the mandated candidates' forums began in some districts before all candidates had filed, were poorly attended (even candidates did not show up), and districts were not monitored to see that the meetings were held. The biographies and statements of over 800 candidates prepared by the League of Women Voters were not distributed until the last minute. Campaign literature was distributed through school children. There was a charge that teachers distributed campaign literature on April 30 and May 1 while voting was taking place, and in one case the Community Board members gave campaign literature to the principal for distribution by children. It was charged that teachers made use of parent lists.

Large numbers of voters failed to receive notification of their voting place and the location of many polling places was changed because of reapportionment and redistricting. There were no maps to direct voters to their correct locations. There was a lack of facilities, supplies and personnel at polling places. Many opened hours late. Some had no voting booths, others had the wrong ballots delivered to them. Still others had to wait for inspectors who failed to arrive on time.

The hastily-compiled computer lists of voters used in place of the usual " buff cards " were inaccurate. Names were missing and inspectors were sometimes unaware that a supplementary list existed.

Election inspectors were insufficiently trained. Some did not understand the preferential ballot and some supplied misinformation about it. Some inspectors, not used to paper ballots, were casual about their collection and protection. There were instances in which sample ballots without election district identification or serial numbers were used instead of official ballots. Inspectors failed to prevent electioneering at the polls; palm cards were at some tables. One inspector was also a candidate, another inspector was the wife of a candidate. There was a lack of bilingual material and interpreters. There were inadequate cardboard ballot boxes, and many were split open or broken or without lids.

With respect to the counting of ballots, there was inadequate security. Police took some boxes to the counting places immediately, while others were left in the school unguarded for several days. Trucking firms hired to transport ballots took them to wrong counting places. Some ballots were lost entirely.

There were instances where the count began before all the ballots arrived, although the order in which ballots are counted affects the outcome in preferential voting.

A number of lawsuits were generated at every stage of the process. One suit dealt with bilingual assistance, one with non-personal registration, one with the use of parent lists, another with the use " of buff cards," one involved distribution of campaign literature, one complained of ballot box security, one charged irregularities in the petitioning.

A lawsuit is now pending to invalidate the election in one district, while a new election was ordered in another district and was held on November 27.

We can never know how many frustrated persons did not get to vote. We cannot assess the disillusionment of many.

The failure of the election process was due primarily to inherent weaknesses in the administrative structure and process.

But in the May 1, 1973 elections, the difficulties were compounded by the collision in dates with the primary elections. A brief chronology may be helpful.

In October, 1972, the Central Board of Education began to plan for redistricting with a hearing set in December. This necessarily was a preoccupation of the Board of Education until February.

Meanwhile, the Board of Elections had to prepare for the June 4 primaries. Although the Legislature had set the date for the Community School Board elections as May 1, the Board of Elections said in January that the date might have to be changed because the voter registration forms and buff cards necessary for the election would not be available. They would have to be reserved for checking petitions and challenges for the regulary June primary.

The Board of Education issued the rules for preparing and filing the nominating petitions, the forms to be made available by mid-March. These petitions were held up briefly because of the ruling by Judge Stewart that the petition forms must be bilingual.

The question of district lines was settled a month before registration began. In February, the Board of Education created a new district, number 32.

The timetable for registration in the elementary schools on March 12 through 17 was released by the Board of Education and the Board of Elections jointly on February 16, and on February 21 the Board of Education sent the rules and regulations concerning registration, petitions and voting to the Community School Boards, district superintendents and principals. The proposed registration dates and procedures for parent voters were under attack by pressure and demands by constituent groups to change the times, increase the days and liberalize the process by permitting nonpersonal registration. The New York County Supreme Court held that nonpersonal registration was illegal.

In the first week of March, the Board of Elections announced that 123 special volunteers had been sworn in to conduct the street campaign to register voters in various districts. The "parent" voters registered with them would have their status validated afterward by school principals. On March 9, Judge Stewart ordered that registration forms, like the petitions, must be bilingual and translators provided in schools with a student population 5 percent or more from Spanish or Chinese backgrounds.

All elementary schools were to be kept open until 8:30 p.m. for registration from March 12–17, two weeks less than the registration period in 1970 when street volunteers had not been used. Registration

by the street volunteers deputized by the Board of Elections would continue to April 3 and in the borough offices of the Board of Elections until April 20. On March 16, Judge Stewart ordered in-school registration to be extended for three days to March 21 to allow for delivery of bilingual registration forms where they had been missing.

On March 16, the Citizens Advisory Council appointed by the head of the Special Election Unit of the Board of Elections expressed concern to the representatives of the Board of Education and Board of Elections respecting the manner in which principals had hired translators.

On March 21, registration in the schools closed, with 25,508 new voters added to the lists. About half were " parent " voters and half regular voters.

At this point, there were also controversies in connection with obtaining lists of parents' names. The head of the Special Unit said it was impossible to publish a complete list of registered voters since the last registration day was only 11 days before the election.

On March 23rd, the Board of Education instructed the district superintendents, rather than the principals, to recruit interpreters for Election Day.

Petitions were filed between March 27 and April 3. By April 12, one-third of the 906 petitions filed had been challenged, including entire slates in 13 districts.

On April 13, the then President of the Board of Elections asked the courts to help provide mini-courts in each borough to hear challenges on Election Day. One extra location in addition to the borough offices of the Board of Elections was provided for challenges in four of the boroughs.

Meanwhile, the crucial controversy over the use of the buff voter cards continued. The Board of Elections was attempting to arrange computer printouts listing the names of the registered voters to be used instead of buff cards. On April 19 the Supreme Court ruled that the Board of Elections must provide buff cards and it appeared that the election date might have to be postponed until May 15.

On April 23, the Appellate Division reversed that ruling. On April 27, the Friday before the Tuesday election, the Court of Appeals upheld the original ruling directing the use of the buff cards. On Monday, April 30, the day before the election, the Legislature amended the Decentralization Law to permit the use of the computer printout.

Thus, the overriding uncertainty about the date of the election was not removed until the last hour.

It is clear from the record that even conscientious and concerned people had difficulty getting factual information about registering, candidates, polling places, and the date of the election itself. The entire electoral process was one of constant uncertainty and crisis.

In this report by "electoral process" is meant all proceedings inclusive of the filing of nominating petitions, registration, dissemination of information, voting, and the count of the ballots.

Before proceeding to a discussion of the problems involved in the electoral process, I recognize that there are some who have urged that Community School Boards should be appointed, not elected.

The adoption of an appointive system would deprive citizens and non-citizen parents of the right which the Legislature has given them to elect their own Community School Boards and would embitter the many who properly consider this an important right. It is a change which would only cause frustration and alienation. What is needed is not to discourage community interest and involvement of the education of our young, but to set up a structure and procedures which will enable fair and responsive elections of Community Boards.

RECOMMENDATIONS

The Governance of the Electoral Process

The single most important change which is required is the concentrated responsibility for the conduct of the electoral process in a separate, independent agency.

As late as October, during the hearings some six months after the May 1 elections, there was disagreement as to the respective responsibilities of the Board of Education and the Board of Elections under the existing law.

Mr. Isaiah Robinson, a member of the Board of Education and its representative at the hearing, testified:

> MR. RUBIN: In effect, then, what the Board of Education decided was that with respect to the responsibility for registration as distinguished from voting, you would use the Board of Elections as your administrative agency in that regard?
>
> MR. ROBINSON: No. We interpret the law to mean that all matters with respect to registration and election were the responsibility of the Board of Elections.
>
> MR. RUBIN: Both registration and the election?
>
> MR. ROBINSON: Yes. And that the Board of Education had the responsibility for information and education. That was our interpretation of it.

On the other hand, Mr. Paul Greenberg, the Director of the Special Unit for School Board elections, of the Board of Elections, testified:

> MR. GREENBERG: The law, as I understand it now, says that the prime responsibility for the rules governing these elections is the Board of Education of the City of New York. They make the rules for petitions, who may circulate them, who may be a candidate, who may campaign in it, and a host of things governing it.
>
> The Board of Elections is the agent that carries out both their mandate and hopefully the mandate of the Election Law of the State of New York, which also governs the school board elections.

The existing statute contributes to the confusion.

Education Law section 2590-b 2(e) provides: " The interim board of education shall provide for the registration of persons qualified . . . to vote . . . ."

Education Law section 2590-c 2 provides: " Such members shall be elected at an election conducted by the board of elections . . ."

Subdivision 5 of section 2590-c provides that each registered voter shall vote at polling places designated by the Board of Elections. It also provides that each person voting as a parent shall vote at polling places designated by the Board of Education.

Paragraph (32) of subdivision 6 of the same section provides that administrative regulations for the conduct of elections by proportional representation, " not inconsistent with the provisions of this article," may be made by the City Board (of Education) and, subject to any such regulation, by the Board of Elections.

Paragraph (31) of subdivision 6 makes the provisions of the Election Law generally applicable.

The result of this diffusion of responsibility is confusion.

The Board of Education, trying to cope with the innumerable education problems of the city, is not geared to operate an election. It has had no experience with petitions, nominations, judicial review, or any other aspect of the electoral process.

The Board of Elections is a bi-partisan agency primarily concerned with general elections. Its members are divided equally between Republicans and Democrats. Inspectors of elections, named by county leaders, must be equally divided between Republicans and Democrats. A Community Board election requires non-partisanship, not irrelevant political bi-partisanship.

Mrs. Elizabeth Clark of the Board of Education staff, reports that " Board of Elections borough offices referred hundreds of calls to the Board of Education claiming the Board of Education was running the elections. Calls were received both before and after Election Day."

In her report, Mrs. Clark states, " Hundreds of voters in all boroughs did not receive notice of where to vote."

The present Executive Director of the Board of Elections, Mr. James Siket, in a forthright statement, says, " Community School District boundaries are not drawn to conform to election districts. This causes 'split' election districts for the school board elections. Because of this, voters who are accustomed to voting in a polling place designated for the general elections find that they must vote elsewhere for school board elections. This results in much needless testiness at the polls. It also contributes to mistakes by the Board of Elections, in having to break up election district binder records to allocate voters' records by address to other election districts."

Mr. Siket states, " The present system of selection of inspectors for School Board Elections is fraught with possibilities of fraud and irregularities."

It is clear that both the Board of Education and the Board of Elections have primary responsibilities other than the conduct of Community Board elections. The result is that these important elections are relegated to a subordinate status.

Such a result cannot be permitted to continue. It is the legislative intent to encourage community involvement. This was the stated reason for the Decentralization Law. The flawed electoral process discourages community involvement. It alienates parent voters who may be voting for the first time at an election. It breeds distrust of the election and in instances distrust of Community Boards elected in a process in which people have no confidence.

The proper conduct of Community Board elections can have important implications. Other states are studying the question of decentralization in cities even beyond the educational system.

I have therefore concluded that the most important single step which the Legislature can take to ensure fair and orderly Community Board elections in the future is the creation of an independent agency with sole responsibility for the conduct of the entire Community Board electoral process. Such an agency, which might be named the " Community School District Elections Commission," should be given complete independence in the discharge of its functions from both the Board of Education and the Board of Elections.

The Commission should consist of three unpaid commissioners — one appointed by the Mayor of the City of New York, one by the Board of Education, and the third by the State Commissioner of Education. Fortunately, New York City is blessed with a number of men and women of great talent who will willingly respond to a call to this task.

The terms of office of the members of the Commission should be three years; the chairman should be selected by the members; each member should be removable for cause, after a hearing, by the appointing body or officer; and vacancies should be filled by such body or officer.

The Commission should be empowered to employ an executive director and such other personnel as may be required.

It should have a small, permanent staff which would function year-round, and should appoint and consult extensively with an advisory council composed of representatives of concerned civic and community organizations in the city.

The legislation which creates the Commission should provide that those requirements of the Election Law which relate to such matters as the timetable for the electoral process, the form of nominating petitions, the location of polling places, the selection of personnel to man the polling places and the procedures for dealing with challenges shall be inapplicable to Community Board elections. The legislation should also delete from Education Law section 2590–c, the present requirement that the elections be held on the first Tuesday in May. In place of these unduly rigid and in some cases wholly inappropriate requirements, the Legislature should vest in the Commission the power to adopt, by regulation, a timetable and procedures which are specifically tailored to the requirements of this unique kind of election in the City of New York. In a word, I would hope that if the Legislature sees fit to accept these recommendations, the legislation creating the Commission would grant it maximum flexibility, subject only to those minimum standards and guidelines which the Legislature believes to be essential.

I have adverted to the problem of communication in the 32 Community Districts. A professional staff geared to this responsibility could do a far more effective job than is possible presently in bringing needed information to the attention of the voters and those who would be candidates. Such an agency can get maximum cooperation from all of the media, and should develop other techniques for bringing the importance of Community Board elections to the public.

New York is fortunate in having among its citizenry the most talented communications people in the world. It is predictable that many of these would respond affirmatively to an invitation to serve on a task force that would direct itself to the problem of effective dissemination of information regarding Community School Boards and their election.

Information campaigns should be a year-round effort. Crisis campaigns undertaken in the last weeks are inadequate.

The Commission should employ inspectors independently of political parties. There are many who would gladly serve at the same rate of compensation as inspectors now receive. These inspectors should be trained in the mechanics of the preferential voting process. They should pass a test ensuring their qualifications.

There will be no need to have four inspectors when two can do the job. There will be no need to have 4600 election districts and 1599 voting places. There will be no need for 9200 poll watchers. With fewer polling places, the cooperation of the Police Department, which is responsible for security, can be given with greater efficiency and at substantially lower cost.

As will be discussed under the following item, " Registration," the Commission will be in a position to determine how many voting places there will be and these need not be related to Assembly districts or election districts.

The Commission can notify each person entitled to vote exactly where he or she votes.

The Commission should have the authority to make use of voting machines if it finds such use to be feasible in a system of proportional representation. This is a matter requiring expert study. I have been advised that it is quite within the realm of possibility.

It would be unrealistic to recommend the creation of this new agency without being conscious of the cost element. Figures which I have seen with respect to the May 1 elections reflect a cost of $3,686,000. There were undoubtedly indirect costs which were not included in this figure. Although I obviously cannot conclusively document my prediction, I would be confident that a small, well-trained staff operating throughout the year, freed of some of the present requirements of the Election Law, would be able to conduct a fair and efficient election for less money than the present, unnecessarily cumbersome procedure requires.

The Community School Board elections should continue to be separate from other elections in the city. A March date would generally avoid conflict with the religious holidays and would avoid confusion with city primaries. Since the religious holidays are not on the same days each year, since the dates of other primaries vary, and since there may be more local elections as more municipal functions are decentralized, the date of Community Board elections should be left to the Commission.

The Commission, by having control of the periods for nominations, the validating of nominations and the date of voting, could avoid in

the future a situation in which, as one observer reported, " Many people voted for those who had been declared ineligible or who had withdrawn."

Nor would it be necessary, as happened in 1973, for the Board of Elections to buy materials and equipment on an emergency basis at unnecessarily high prices. With proper planning and careful preparation, with knowledge of where the voting would take place and when, with more knowledge than is now available as to the probable number of voters, the Commission could effect large savings. And with a unit functioning throughout the year, if paper ballots have to be used, proper arrangements could be made well in advance of the election for the delivery of ballots and adequate ballot boxes to the polling places, and for their protection and prompt delivery to the locations where the counting of ballots will take place.

The Commission could also undertake research into proportional representation techniques to determine whether any amendments of the present law could improve this form of voting.

The Commission should also be responsible for the nominating procedure. The present highly technical requirements with respect to petition, are irrelevant to a Community Board election. A far simpler petition form could be used. Challenges to nominations should be heard and decided by designees of the Commission.

The relationship of the proposed Commission to the existing structure of government must of course be considered. After reviewing a number of possible alternatives. I have concluded that the Commission could most appropriately be created within the existing corporate structure of the Board of Education. This technique would facilitate the handling of " housekeeping " problems, while still permitting the full independence in its operations which the Commission must have.

The legislation should also direct the Commission to report to the Legislature, the Governor, the Mayor, the City Council, the Board of Regents, the Commissioner of Education and the Board of Education following the 1975 election, on all aspects of the operations of the Commission and the administration of the election.

IN SUMMARY, I RECOMMEND THE CREATION OF AN INDEPENDENT COMMISSION CONSTITUTED AND EMPOWERED AS AFORESAID TO CONDUCT THE ELECTORAL PROCESS RELATING TO COMMUNITY SCHOOL BOARD ELECTIONS.

REGISTRATION

The matter of registration is extremely important. Much criticism was voiced at the hearings.

Under existing law, those who are registered to vote at the regular elections are automatically eligible to vote at Community Board elections. Non-citizen parents, however, must register specially.

Registration for Community Board elections should be made as easy and simple as possible. The procedure should be so easy for the prospective voter that the person who does not register for a Community Board election is almost saying affirmatively that he or she has no interest and does not wish to vote.

Having said this, I believe there should be a single registration process for all voters, handled separately from registration for general elections. Such a procedure would avoid many of the difficulties of the dual registration system presently in effect. In addition it would enable the new Commission to have an accurate count of school board election registrants, and to plan for election day accordingly. An accurate indication of the number of potential voters would serve as a guide in determining the number and location of polling places, and would enable the Commission to determine the number of personnel required on the day of the election.

To facilitate the registration process, I propose that registration by mail be authorized, along with year round personal registration.

The idea of registration by mail is not new. In fact, there is now pending in the Senate of the United States a bill (S. 352) introduced by Senator McGee that specifically undertakes to set up machinery for registration for Federal elections by mail. A supporting memorandum points out that " for a number of years, Texas has practiced clipping registration forms from the newspaper and mailing them to the registrant — no increase in fraud."

Another, and more comprehensive bill (S. 472) has been introduced by Senator Kennedy for himself and other Senators. It proposes machinery for a registration program that will include not only registration by mail but additionally, mobile registration, door-to-door canvass procedures, public information, and other activities designed to increase voter registration.

I would suggest that the form and method of mail registration be left to the proposed Commission. It will be able to examine into the forms used elsewhere in order to minimize the possibilities of fraud. The Commission may choose to mail a form to all registered voters listed with the Board of Elections and to all parents not registered but listed with the schools. It may use other lists as well, such as Social Security records.

The Commission would have the authorization to deputize registrars. Parents enrolling children in schools would be offered the opportunity to sign the registration card at the time of registering the child. All parents and other people would also be informed that the registration form could be filled out at any time during school hours and school secretaries would be deputized for this purpose. In addition, there could be a well advertised period in addition to all of the foregoing during which persons who had failed to register could do so at stated places.

In other words, as stated, registration for parents and non-parents alike could be made so simple that the person who declines to register is affirmatively declaring his unwillingness to vote.

Thus, the Commission will have its own records of those qualified to vote. The type of difficulty encountered in the May 1 election could not recur. There would be no need for printouts in place of regular registration cards.

Registration would be permanent except in the case of parents whose qualification is dependent upon having a child at school. In that case, as now, each school would have to notify the Commission of any departure from that school of the pupil. If a parent has children attending schools in two different districts, that parent would have the option to decide in which district he or she wishes to vote.

The Commission will set up voting districts and be in a position to inform each prospective voter exactly where to vote and to furnish the correct list of registrants to each polling place. Maximum flexibility should be given to the Commission so that it may employ all techniques which, upon study, it finds to be feasible to obtain maximum registration.

IN ACCORDANCE WITH THE FOREGOING, I RECOMMEND THAT THE COMMISSION BE EMPOWERED TO SET UP INDEPENDENT REGISTRATION PROCEDURES, FREED FROM VARIOUS PRESENT REQUIRMENTS OF THE ELECTION LAW, WITH ITS POWERS TO INCLUDE REGISTRATION BY MAIL AS WELL AS PERSONAL REGISTRATION. I RECOMMEND THAT WIDE LATITUDE BE GIVEN TO THE COMMISSION TO DEVELOP APPROPRIATE PROCEDURES. THE LEGISLATION SHOULD, HOWEVER, PROVIDE THAT REGISTRATION BE PERMANENT EXCEPT WHERE THE RIGHT TO VOTE IS DEPENDENT UPON THE PARENT HAVING A CHILD AT SCHOOL, IN WHICH CASE REGISTRATION SHOULD BE VALID UNTIL THE PUPIL LEAVES THE SCHOOL.

PROPORTIONAL REPRESENTATION

Under the Decentralization Law, the legislation provided for proportional representation through preferential voting in order to provide representation of minority viewpoints, ideological as well as ethnic. Under this method of election, the voter must make his selections in order of priority. A counting procedure is spelled out which assigns the minimum quota of " first choice " votes needed to win a seat, and once the quota is met by a candidate, it transfers the remaining top choices for him to the second choice on the ballot, and so on. Candidates are eliminated in a similarly complicated way.

The value of proportional representation is a subject on which there can be valid disagreement. Opponents of this method argue that there is confusion over how to rank and count candidates and that this intimidates the prospective voter and discourages people from voting. It is also argued that proportional representation requires special training of election workers and counters as well as educating the voters. It is argued that it does not achieve minority representation *per se* but only in terms of and in proportion to the number of votes cast. It is also a fact that there is a certain element of chance because the order of counting ballots is determined by lot. Another point that is made is that voting machines are not used and perhaps cannot be used, and the necessity of paper ballots opens the possibilities of fraud.

The proponents of proportional epresentation point to its advantages: first, the statistics would indicate that the system is working quite well. It gives voting minorities some representation and the strongest groups obtain the seats to which they are entitled. There are those who argue that the reason that cities have abandoned proportional representation is that it works too well, to the disadvantage of the major parties, allowing minority parties a representation which the majority does not wish.

Much of the difficulty of ranking the candidates would be dissipated if there were fewer candidates on the ballot. This point will be discussed later in this report.

With each election, the voters understand the system better. It should not be difficult for the staff of the Commission to train adequately inspectors and election workers to understand the procedures. So far as complexity is concerned, the ballot which confronted the voter on the voting machine at the general election on November 6 was far more complicated than the preferential ballots used in Community School Board elections.

But the overriding question about proportional representation is whether it does, indeed, achieve its end of giving fair representation

on the Community School Boards to various minorities within the districts.

Citywide, according to the Board of Education, the population is 21 percent black, 15 percent Puerto Rican and Spanish surnamed, 1 percent Oriental and 63 percent "other," chiefly whites. Of the 288 Community Board members elected on May 1, 25 percent are black, 12 percent Puerto Rican and Spanish sur-named and one-half percent from Oriental background. In other words, the citywide figures would indicate that the ethnic minorities, despite their low turnout compared to whites, are represented approximately in proportion to their relationship to the total population.

If there were to be a substitute for proportional representation, it would have to be a form of sub-districting which will be discussed under the succeeding point.

ON BALANCE, I RECOMMEND THAT PROPORTIONAL REPRESENTATION AND THE PREFERENTIAL BALLOT BE CONTINUED.

SUB-DISTRICTING

The question of sub-districting has been a difficult one. Because the individual districts are so large, their populations so diverse, the provision of normal press and electronic media coverage so difficult, the idea of sub-districting into smaller units and dividing the Board members among them is most appealing.

The obvious advantages would be that smaller units would make it easier for citizens or parent groups to reach the voters and keep them informed about school issues and candidates. It would ease the problem of communication. Also, better informed voters would be less liable to manipulation by special interests. Fairer geographical representation would be produced. Fairer minority representation would also result since a higher turnout in one sub-district would not override a lower turnout in another.

The difficulty is that the concept is not self-executing, and when one attempts to implement it, many problems arise. The complexities may be apparent from the fact that during this past summer a study group of various civic and community organizations worked intensively on this question and could not arrive at a consensus.

Against the idea of sub-districting is the argument that it would be divisive, pitting neighborhood against neighborhood. Voters would be prevented from voting for all members of the Board and Board members would tend to represent the interests of their own enclaves,

not the general good of the district as a whole. Small districts are as susceptible to manipulation by special interests as large districts. The United Parents' Association fears that sub-districting would lead to the defeat of parent-backed candidates in too many areas of the city. Sub-dividing the districts would generate more fractionalization, more hostilities, more confrontations.

One method suggested by the Public Education Association is to draw the sub-districts around the cluster of elementary schools that feed into a junior high school. Under this system the Boards could vary from seven to 15 members. (The PEA has made a detailed and careful presentation of the plan and if at any time the Legislature should decide to pursue the concept, its material would be worthy of careful study.)

Yet, as the PEA itself points out, such a scheme has inherent complications. The number of clusters varies from three to eight or nine among the districts. The number of elementary schools within the cluster also varies, ranging from one to eight, including feeder schools that send one to 50 children to a junior high school, and others that send 25 or more children to more than one junior high. The number of registered voters in each cluster also varies widely. In District 29, for example, it ranges from 17,000 to 28,000.

Clearly then, the clusters would have to be juggled and readjusted to achieve balanced representation. There would have to be readjustment in the formula to conform to the " one man-one vote " doctrine. What would constitute a population disparity is not an exact proposition. The exigencies of school utilization and integration require continual readjustment of the clusters.

Neighborhoods change rapidly and if an accommodation to ethnic populations is the objective, there would be continual redrawing of lines as such populations shift.

Not even population alone, ethnic and community considerations aside, presents a clear path, for then one is faced with the question of whether to subdivide on the basis of adult population or student population. Wide diversities in the ratio of adults to students, already cited, show that what would work in one district would fail in another.

Any drawing of subdistrict lines will be subject to the fear and charge that it was influenced by election politics rather than by the educational needs of the children.

Particularly in view of the continually changing and shifting population within the city, no matter how honorable the reasons for altering subdistrict lines, the charge of gerrymandering would be present and would be vocal. Indeed, the appeals from any alteration in sub-

district lines would probably be so numerous that special arrangements would have to be made to cope with the complicated presentations that would be made in each instance of complaint. While the idea of subdistricting has undoubted appeal, when one attempts to translate the idea into practice, the problems generated would outweigh the benefits that might be produced.

ON BALANCE, THEREFORE, I RECOMMEND THAT THE PRESENT CONCEPT OF DISTRICTING BE RETAINED AND THE SUGGESTION OF SUBDISTRICTING BE REJECTED AT THIS TIME.

LENGTH AND STAGGERING OF TERMS

Here also, a complex issue is presented. The fact that one votes for nine or more candidates is in itself a difficult and discouraging fact which in all probability contributed to the nonvoting of persons who otherwise would be interested and concerned. A two-year term seems too short since it takes a new member a number of months to become oriented and knowledgeable. The present system of electing an entire new Board every two years, rather than a system of staggered terms, as is the case in every other school district in the State, is likewise disadvantageous. Staggered terms are favored by most school Boards in the nation not only for continuity of experience assured, but because fewer seats are up for election, fewer candidates therefore run and the electorate has a better chance to learn about the candidates than if the field were crowded.

However, it can be argued that continuity does not depend on staggered terms. In 1973, two-thirds (179) of the Board members ran again and almost half (43 percent) of the present 288 Community Board members were incumbents. In 11 of the 32 districts, second-term members constitute the majority.

There are those who consider the assurance of continuity by staggered terms a drawback in itself. Indeed, the continuity of " unrepresentative " Boards is precisely what they wish to upset. They feel that the fewer seats available, the less chance there will be for a minority viewpoint to win a seat. Not until the 5th or 6th seat, they argue, can 16.7 percent or 14.4 percent of the voters elect a candidate.

But the fact remains that in 1973 there were 841 candidates in the field. The smallest number to run in any district was 18. The largest was 45. No matter how much communications can be improved, it seems to me there is virtually no way to inform the voters adequately about two dozen or more candidates running for nine seats.

The difficult question then is what can be done about it. The easiest formula that comes to mind is to have annual elections for three members from each district, each member to serve for three years. The difficulty with this is that parents' associations quite properly argue that they simply cannot mobilize their energies and manpower to wage an adequate campaign for parent-supported candidates if they must do this every year. They urge that only biennial elections are fair and that the present statutory biennial elections should be retained.

But if biennial elections are to be held, and if three candidates were to be elected at each election, the term of a Board member must be six years. This length of term, at least at the present time, is too long and would meet with understandable objection.

Here also a balanced compromise appears necessary. That compromise is to have biennial elections with five members elected at one election and four members elected at the succeeding election, two years later. This would provide four year terms, which appears to be reasonable and is the average term of school board members throughout the State.

Obviously, it must quickly be conceded that when one reduces the number of vacancies at each election, the percentage of votes required to elect a candidate is necessarily increased. To that extent the effect of proportional representation is diminished. Today a candidate who gets approximately 10 percent of the vote can be elected. With five running, the candidate would need 16.7 percent of the vote. If four seats are to be filled the successful candidate would need approximately 25 percent of the vote. There are those who argue that this constitutes an improvement, not a disadvantagement. They would urge that, as a matter of degree, too much splintering is undesirable and the prospect for moderation is improved if relatively small minorities do not obtain representation.

Again, it is impossible to assert that any given alternative is demonstrably " right." But I believe that considering all the elements and, most importantly, the factor of having too many candidates in the field at every election, the resulting difficulty of providing visibility to the electorate, must be recognized. It seems to me, therefore, that the suggestion of having biennial elections with five members elected at one time and four the next time would, on an overall basis, best meet the problems which have been described. Obviously, the problems inherent in electing all nine members of each Board in a single year cannot be avoided in 1975. However, they can- and should be- avoided in future years. It may be, of course, that with the new Commission handling the pre-election procedures as well as the election

in 1975, the disadvantages of having nine candidates elected in a single year can be overcome. In addition, the report by the Commission to the Legislature and others following the 1975 elections will give valuable insights. However, I must make a recommendation at this time.

I RECOMMEND THAT ELECTIONS BE BIENNIAL, AND THAT AT THE 1975 ELECTION THE FIVE CANDIDATES RECEIVING THE HIGHEST NUMBER OF VOTES BE ELECTED FOR FOUR YEAR TERMS AND THAT THE NEXT FOUR CANDIDATES BE ELECTED FOR TWO YEAR TERMS.

ELIGIBILITY

First, as to eligibility of voters. It has been urged upon me that only parents of school children should be permitted to vote at Community Board elections. Others have suggested that parents of school children should elect five members of the Board while non-parents elect four. Aside from the merits of these proposals, to which I do not subscribe, I believe that legislation which restricted the voting power to parents of school children would be unconstitutional under the *Kramer* decision of the United States Supreme Court. Similarly, the suggestion that parents of school children elect five while others elect four would violate the " one man — one vote " concept since, in effect, every parent would have 1.25 votes.

With respect to eligibility for Board membership, it has also been suggested that only parents of public school children should be eligible because of their primary interest in education. Beyond the fact that such narrow eligibility denies to non-parents a basic right to citizenship, it is unfortunately true that parenthood neither insures interest in education nor automatically guarantees qualification to hold office. New York has had a long list of men and women who have served as School Board members who have not had children in school at the time of service.

Another point which has been made is that under existing law employees of the school system can run for Community Board membership provided they are not employed in the district in which they run. After the 1973 election, 24 teachers, 2 principals, 2 Central Board staff members, and 3 para-professionals were elected to Community Boards. Witnesses claimed that this was sometimes achieved in effect by " swapping " employment assignments. Those who argued that school employees should be permitted to be Community Board members point out that they have a citizen's right to run for office, that

they have valuable expertise to offer, that the element of conflict of interest is minimal and that realistically to deny them the right to run accomplishes little, since they can have surrogates to run in their places. It is argued that it is better to have the true candidates out in the open.

On the other hand, the conflict of interest may well be more than minimal. A very important responsibility of the Board of Education is the negotiating of contracts with its employees. Community Boards not only serve in a consultative capacity, but a committee of the Community Boards participates directly at the negotiating table. This conflict of interest can well be argued to be more than minor.

As a Board member, a school employee would have a natural alliance with all school employees affected by Board decisions. In addition, when school employees run for Board membership in opposition to candidates backed by parents, antagonism has been increased. In some cases it may prove to be extremely difficult to keep electioneering out of the schools if staff members are candidates for office.

Again, on balance, I believe that no employee of any Community School District or of the Central Board of Education should be eligible to run for Community Board membership.

Another restriction has been urged, namely, that elected officials at the municipal, State, and Federal levels be ineligible to run for Community Board membership. I believe that in view of the fact that such elected officials do determine policies which affect Community School Boards, they should be ineligible to run for membership on such Boards. No matter how honorably they discharge their duties both as officials holding other office and as Community Board members, it is the perception of many people which is important. That perception is that membership on Community Boards of officials holding other elected public office injects party politics and club house influences into the functioning of the Community Boards. This perception is damaging and should be avoided.

I recognize that nothing prevents members of the staff of such elected officials from serving, and the argument can be made that it is better to have the officials themselves out in the open than operating through their staff people. However, as in so many other things, there is the element of degree. I feel it would be impractical to go beyond declaring the ineligibility of elected officials.

In addition to the foregoing amendments, I believe that Education Law, Section 2590-c, Subdivisions 3 and 4 should be amended to eliminate the phrase " citizen of the state " as a purported qualification to vote or to serve as a member of a Community Board. Since the law presently permits parents who are not citizens of the United States to

vote and hold office on Community Boards, provided they meet specified age and residence requirements, since the concept of "citizenship of the state" is not clearly understood, and particularly since the words in question do not add any substantive qualification beyond residence, the deletion of the words "citizen of the state" will avoid confusion.

I further believe that Education Law, Section 2590-c, Subdivision 4, dealing with eligibility for Community Board membership, should be amended to reduce the minimum age requirement from 21 to 18. A similar amendment was made at the 1973 session of the Legislature with respect to qualifications to vote in Community Board elections.

I RECOMMEND THAT THE ELIGIBILITY REQUIREMENTS FOR VOTERS AND COMMUNITY BOARD MEMBERS BE MODIFIED IN ACCORDANCE WITH THE FOREGOING SUGGESTIONS.

FILLING OF VACANCIES

The problem of filling Community Board vacancies is a vexing one.

According to information provided by the Board of Education, a total of 75 vacancies occurred between the 1970 and 1973 elections. Vacancies occurred in 28 of the 31 Community Boards.

Under present law, vacancies are filled by the Boards themselves. In at least one instance this has resulted in inaction by the Board due to a divided vote. A further problem is the fact that if a vacancy be that of a "minority" member and the vacancy is filled by the remaining members of the Board, there is the risk that the majority will select a successor more sympathetic to their views than was the resigning member.

It has been suggested that the vacated post be offered to the person who ran 10th in the prior election and if he cannot serve, to the person who ran 11th, etc. This has the objection that such person may have been a candidate affiliated with the majority but who was defeated by a minority candidate. For such person automatically to receive membership could distort the will of the electorate.

The difficulty is further compounded by the ruling of the Court of Appeals in the *Roher* case. The Court held that the provisions of Article XIII, Section 3 of the State Constitution apply to vacancies on Community Boards. It therefore held that no vacancy on a Community Board may be filled by appointment beyond December 31 of any year.

First, I would urge that the Legislature initiate an amendment of the State Constitution to make Article XIII, section 3 of the Constitu-

tion inapplicable to boards of education. The terms of office of Community Board members, and of school board members generally in this State, begin on July 1, with the elections held during May or June. Thus the " school year " does not coincide with the " political year." It is impractical and an unnecessary hardship to conduct special elections to fill vacancies simply because the appointive power can legally be effective only until the end of the calendar year. However, since such an amendment must pass two successive Legislatures and then be submitted to the people by referendum, such amendment cannot of course be operative in time for the 1975 election.

With respect to the filling of vacancies by appointment, to the extent permitted under the *Roher* decision, I suggest immediate legislation providing that vacancies be filled by appointment to be made by the Chancellor of the city school system, rather than by Community Boards as presently provided. I believe that of all the possible alternatives to the filling of vacancies by appointment, this approach is the one most likely to avoid paralyzed Boards and to ensure that each vacancy is filled with a person who is representative of the constituency which elected the member being replaced. I recognize that an argument can be made that a local membership should not be filled by a Central Board official. But I believe that, realistically, this proposal will not only help to prevent split Boards but will also result in appointments likely to be fairer than any alternative method.

I further recommend that in order to implement the decision of the Court of Appeals in the *Roher* case, legislation be enacted authorizing the Commission to conduct special elections to fill vacancies pending the next regular election. It should be noted that no more than one special election would be required in any year, since all vacancies in all Community Boards could be filled at a single election.

I THEREFORE RECOMMEND THAT THE LEGISLATURE INITIATE A CONSTITUTIONAL AMENDMENT WHICH WOULD PERMIT THE FILLING OF VACANCIES ON BOARDS OF EDUCATION BY APPOINTMENT FOR THE UNEXPIRED TERM. I FURTHER RECOMMEND THAT, PENDING THE ADOPTION OF SUCH A CONSTITUTIONAL AMENDMENT, LEGISLATION BE ENACTED TO PROVIDE FOR THE FILLING OF VACANCIES IN ACCORDANCE WITH THE FOREGOING RECOMMENDATIONS.

SLATES

The suggestion has been made that Community Board candidates run on political slates, such as Democrat, Republican, Conservative,

Liberal or other party designation, and that the election be held as part of the general election in November.

I believe the proposal to be inadvisable. The political affiliation of a candidate is irrelevant to his or her qualifications as a Community Board member. Further, to have candidates running on political party slates would surely lead the public to believe that the Community Boards serve the interests of a political party rather than the educational needs of the children. To have the election as part of the general election would subordinate the Community Board election. The Community Board election would be swallowed up by the more dramatic political election.

As to whether Community Board candidates should run on nonpolitical slates poses a more difficult question. Although such slates make it difficult for the independent candidate to oppose a joint effort, slates and coalitions make it easier to organize a campaign and to inform the voters about the candidates.

Whether such nonpolitical slate names should appear on the ballot is another problem. The practice would, of course, make it easier for the voters, who would have to remember only the name of the slate rather than the names of individual candidates. It requires monitoring, however, to see to it that the stated coalitions are not spurious, and that they do back the candidate using their imprimatur.

THEREFORE, I RECOMMEND THAT NO POLITICAL PARTY SLATE DESIGNATIONS BE ALLOWED ON THE BALLOT. AS TO NONPOLITICAL PARTY SLATE DESIGNATIONS, I WOULD LEAVE THIS TO THE COMMISSION TO DETERMINE WHETHER OR NOT IT CAN ADEQUATELY MONITOR THE PRACTICE. THE LEGISLATURE SHOULD GRANT SUCH LATITUDE AND AUTHORITY TO THE COMMISSION.

TO IMPLEMENT THE FOREGOING EDUCATION LAW SECTION 2590-c, SUBDIVISION 6, PARAGRAPH (4) SHOULD BE AMENDED TO ELIMINATE THE WORDS "OR OTHER ORGANIZATIONAL AFFILIATION."

PETITIONS

The requirements of the Election Law relating to nominating petitions are far more elaborate than the practical requirements of petitions for nominations to Community Boards. Therefore, the requirements of a petition for Community Board candidacy should be left to the new Commission.

The present number of 200 signatures is as "right" as any other.

The present law limits the voter to signing one petition. The point has been made that since he can vote for all the seats which are up for election, he should be entitled to sign a comparable number of petitions.

However, if a voter can sign as many petitions as there are open seats, an entire slate could get on the ballot with only 200 signatures, repeated for all. This would defeat the purpose of demonstrating at least some potential support for the individual candidate.

In the May elections, according to information supplied me, there were approximately 170 challenges to petitions, 52 court cases and 55 disqualifications.

According to a staff member of the Board of Election, many people voted for those who had been declared ineligible or those who had withdrawn. It will be important for the Commission to see to it that all candidates whose names appear on the ballot are valid candidates as of the date of the election.

Challenges to nominating petitions should be heard by a representative of the new Commission.

I THEREFORE RECOMMEND THAT THE PRESENT REQUIREMENT OF 200 SIGNATURES BE RETAINED, THAT A VOTER CONTINUE TO BE ENTITLED TO SIGN ONE PETITION ONLY, AND THAT THE NEW COMMISSION BE AUTHORIZED TO PROMULGATE REGULATIONS AND ESTABLISH PROCEDURES TO REGULATE THE NOMINATING PROCESS, INCLUDING THE FORM OF PETITIONS.

CAMPAIGN EXPENDITURES

The question of limitation of campaign expenditures was raised by several of the witnesses. It was urged that the United Federation of Teachers was in a position to finance campaigns in support of candidates it endorsed to an extent which no other individual or group could possibly match.

In a forthright letter to me by Mr. Albert Shanker, dated November 27, he states that the UFT spent slightly over $127,000 in support of the candidates it favored, and that this expenditure is exclusive of the value of services in behalf of candidacies performed by teachers and others where such services cannot accurately be measured. (In the same letter, Mr. Shanker complains that officials of anti-poverty agencies campaigned during working hours and that in the recent special election in District 17 the Union has documentary evidence that postage meters registered to agencies of the City of New York were used to mail literature urging votes for three particular candi-

dates, all opponents of the UFT-endorsed incumbent majority slate.)

Section 455 of the Election Law imposes limitations upon the amount which may be spent by candidates for public office and the political committees supporting a candidate. I believe that the proposed legislation recommended herein should incorporate provisions similar to those of Section 455.

Various limitation figures have been suggested and here also there is no way to select a figure that is demonstrably " right." I personally would suggest that a limitation of $1,000 per candidate would be as right as any other. All campaign expenditures should be required to be reported and made public.

If new legislation applicable to general elections should be enacted in this area, I would suggest that such legislation, to the extent appropriate, be made applicable to Community Board elections.

I RECOMMEND THAT LEGISLATION BE ENACTED TO REQUIRE CANDIDATES FOR ELECTION TO COMMUNITY BOARDS, AND COMMITTEES SUPPORTING THEM, TO MAKE A PRELIMINARY REPORT OF CAMPAIGN RECEIPTS AND EXPENDITURES 5 DAYS BEFORE EACH ELECTION AND A COMPLETE REPORT 20 DAYS AFTER EACH ELECTION, AND THAT PROVISION BE MADE, PATTERNED AFTER SECTION 455 OF THE ELECTION LAW, LIMITING EXPENDITURES TO $1,000 PER CANDIDATE.

USE OF SCHOOL CHILDREN TO DISTRIBUTE CAMPAIGN LITERATURE

Obviously, an easy and inexpensive way to get information to parents is to have pupils carry such information home. I see nothing improper in this, provided such information distributed by children is limited to general information on registration and the elections. However, it would be unwise to involve children in delivering campaign literature written for specific candidates or slates. The children become the agents of candidates. Further, the contents of some literature may be objectionable and the question of censorship should be avoided.

I THEREFORE RECOMMEND THAT SCHOOL CHILDREN BE GIVEN ONLY GENERAL INFORMATION PROVIDED BY THE COMMISSION RELATING TO REGISTRATION, THE ELECTIONS, AND IN THE DISCRETION OF THE COMMISSION, BIOGRAPHIES OF CANDIDATES.

MULTILINGUAL ASPECTS

Various decisions by the courts relating to the distribution of multilingual materials and the use of interpreters have become requirements to be enforced by the Commission.

The number of interpreters during registration and on election day and their employment should be determined by the Commission, not by district superintendents or principals. Likewise, the training of interpreters and the preparation of printed materials should be the responsibility of the Commission.

I RECOMMEND THEREFORE THAT ALL ASPECTS OF MULTILINGUAL LITERATURE, AS WELL AS THE ENGAGEMENT, TRAINING, AND USE OF INTERPRETERS AND OTHER PERSONNEL, BE LEFT TO THE COMMISSION.

PARENT LISTS

I RECOMMEND THAT PARENT LISTS BE TURNED OVER BY SCHOOL AUTHORITIES TO THE COMMISSION SO THAT THE LATTER CAN MAKE APPROPRIATE EFFORTS TO OBTAIN REGISTRATION AND INTEREST IN VOTING. PARENT LISTS SHOULD NOT BE DELIVERED TO ANY OTHER INDIVIDUAL OR GROUP. ALL LISTS OF REGISTERED VOTERS, INCLUDING PARENTS, SHOULD BE PUBLIC.

CONCLUSION

I recognize that in several respects the foregoing recommendations call for substantial changes in the structure and governance of Community Board elections. However, I have attempted to make recommendations which go no further than the record indicates is needed.

I respectfully express the hope that you and the Regents and the Legislature will give this problem early consideration.

The proper conduct of Community Board elections is very important unto itself. It has additional and equally important implications as states and cities seek to create more local agencies which will be elected by the people.

MAX J. RUBIN
Special Advisor to the
Commissioner of Education

APPENDIX C

USE OF PROPORTIONAL REPRESENTATION FOR COMMUNITY SCHOOL BOARD ELECTIONS

Supplemental Report

by

George H. Hallett, Jr., Ph.D.

April 1974

APPENDIX C

One of the most relevant features of the school decentralization experience for the work of the Charter Commission is the use of proportional representation (hereafter "P.R.") in the Community School Elections of 1970 and 1973. This method of election was prescribed in the School Decentralization Law (Section 2590-c of the Education Law) for the purpose of involving all important sections of each community as deeply as possible in the management of the local schools.

Instead of making it possible for a single group of voters to win all the representation, either in an entire school district or in each of several subdivisions, the P.R. method offered a chance for representation to any substantial minority* and so invited all elements in each community to participate. To what extent did they do so? And to what extent did the election method succeed in representing fairly those who did participate? Answers to these questions are obviously important to the Commission's consideration of the method to be used for selection of any elective representative bodies that may be provided for under a decentralization plan for New York City government.

Election Statistics for 1970 and 1973

For 1973 the figures show that with only 3.67 percent of the ballots invalid or blank, approximately 90 percent of

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* In this case any minority which could muster one-tenth of the valid vote in the whole district plus one.

those who cast valid ballots helped elect school board members for whom they voted in every one of the thirty-two school districts and in the whole city. Seventy percent saw their first choices elected, including a majority in every district, and another 20 percent helped to elect a second, third, or other choice when it was determined that their first choice had no chance of being helped to election by their ballots. Many of the remaining 10 percent saw one or more of their choices elected by others (no candidate was credited permanently with more votes than the quota that he needed to assure his election). Furthermore, in every district the nine separate constituencies of voters who elected the nine school board members under P.R. rules were almost or exactly equal -- the "one-man, one-vote" principle carried to its ultimate conclusion. Thus the election method achieved its objective of making each board an accurate cross-section of the part of the community that voted.

The record three years earlier was nearly as good. With only 2.5 percent of the ballots invalid, 85 percent of those who cast valid ballots helped elect school board members for whom they voted -- better than four out of every five in every one of the thirty-one districts, even though in this first election some districts had over fifty candidates and one of them (Staten Island) had seventy-nine. Nearly three-fifths of the voters (58.6 percent) saw their

first choice elected and there were only four districts in which the number so represented by their top favorites was not an absolute majority.

Ethnic Representation

Consideration of the ethnic backgrounds of school board members elected is pertinent, since a desire to involve the black and Puerto Rican communities in education of their children (now a majority of all the children in the city's public schools) was a major incentive for the adoption of proportional representation. Some analyses of this aspect of the elections compare the ethnic composition of the boards, not with the ethnic composition of the voters or potential voters, but with the ethnic compostion of the school children. School children do not vote and no election method can reflect anything but votes. However, the school board elections did elect Blacks and Puerto Ricans in much greater proportion than other public elections here -- a fact that was emphasized and discussed at some length by Isaiah Robinson in his appearance for the Board of Education on October 23, 1973, at the State Education Department's hearings on the Community School Board elections.

Mr. Robinson compared the 24 percent Blacks and 13 percent Puerto Ricans on the City's school boards with the 2 Blacks (5 percent) and no Puerto Ricans on the City Council; the 1 Black (13 percent) and no Puerto Ricans on the Board

of Estimate; the 3 Blacks (12 percent) and 1 Puerto Rican (4 percent) in the City's delegation in the State Senate; and the 2 Blacks (10 percent) and 1 Puerto Rican (5 percent) in the City's delegation in the U. S. House of Representatives. He commented: "The fact also remains that minority membership on our school boards, as a result of the proportional representation system, is more representative than is true of any other elective body chosen by voters of New York City."

The 1973 City Council election, held by districts deliberately drawn to make election of more Blacks and Puerto Ricans possible, sent to the new Council 4 Blacks out of 43 members (9.3 percent) and 2 Puerto Ricans (4.7 percent). This is still only 14 percent of the Council, a little over a third of the proportion of these minorities in the general population.

Figures supplied by the United Parents' Associations show that in the 1973 elections Blacks and Puerto Ricans were elected to the school boards not merely in the "ghettos" but in twenty-five of the thirty-two school districts scattered throughout the five boroughs of the city. Blacks were elected from twenty-three districts, Puerto Ricans from eighteen -- and a person of Chinese descent from the district including Chinatown. The 71 Blacks and 38 Puerto Ricans elected comprise 37 percent of the 288 members elected. They include majorities in three of the six districts in

Manhattan, three of the six districts in the Bronx, and four of the twelve districts in Brooklyn. Without forcing anyone to vote on ethnic lines, proportional representation quite surely gave more adequate and equitable representation to the City's different ethnic groups than could have been secured by any other method short of appointment.

Voter Turnout

Though a method of election can be expected only to interpret the votes as cast, it is significant to consider to what extent the voters availed themselves of their opportunities and whether the method itself was responsible for significant numbers of abstentions.

In neither year was the voter turnout all that had been hoped for. In 1970 it was 14 percent of the registered voters, varying from 5 percent in the Ocean Hill-Brownsville district, where there was a heavy boycott for local reasons, to 22 percent in a district in northern Queens. In 1973 it was 10 percent, varying from 5 percent in East Harlem to 30 percent in the hotly contested Canarsie-East Flatbush district.

The extent to which any election method is used is likely to depend more on the issues involved than the method itself, but P.R. at least offers the voters an assurance that their votes will be effective if they are cast. The percentages of votes cast in these school board elections

compared very favorably with the numbers cast in school board elections in the suburbs and elsewhere in New York State under the more usual methods of election, and greatly exceeded the turnout in antipoverty corporation elections for boards with substantial amounts of Federal money to dispense. Those who did vote had little difficulty with the P.R. method, as shown by the low percentage of invalid ballots and the highly effective use of alternative choices by those whose first choices were defeated. All that was required of the voters was to mark a number 1 opposite the name of their first choice, and numbers 2, 3, etc., to indicate additional choices if they cared to do so.

The conclusion seems clear that the failure of many voters to take advantage of the new opportunity for equitable minority as well as majority representation is not to be ascribed importantly to the P.R. method of election. It is not a good reason for preferring another method which cannot approach the virtually complete representation on equal terms of those who do vote that proportional representation offers.

Methods of making more voters interested in school elections and more aware of the new opportunities for meaningful involvement under P.R. should of course be explored. If the method were used for the election of bodies with broader powers and more visibility, a larger turnout might be expected. In some of the elections of City Coun-

cilmen by proportional representation from 1937 to 1945, more votes were cast for a Council member than for a Borough President.

Information about Candidates

A common complaint about the school elections was that it was difficult to find out much about the fairly numerous candidates and so cast an intelligent vote.

Voter familiarity with candidates is always a problem, particularly when the area concerned is too small to be covered extensively by newspapers and broadcasters. Proportional representation, however, makes the problem less serious. It would be nice to know a good deal about all the candidates, and the expedients to that end already instituted in the school board elections should be expanded, but it is not necessary under P.R. to know all the candidates, or even most of them, to help elect a satisfactory representative.

Under other methods numerous candidates and a scattering of votes among them do present serious problems. To meet them, primaries and run-off elections have been invoked with only imperfect results. But P.R. as used in this country, Ireland, and Australia meets the problem of scattered and therefore wasted votes by means of a preferential ballot, without primaries, all in one election, and in addition makes it possible for any substantial minority to

elect a candidate regardless of what other voters do and without even knowing the other voters' candidates.

So if a voter can find out enough about the candidates to identify four or five of them with whom he would be reasonably well satisfied, he can cast an intelligent vote and almost surely an effective one. No voter can help elect more than one, and a good majority of the voters in the P.R. elections have been getting their very first choice.

When we choose a doctor or a lawyer, we don't complain about there being too many doctors and lawyers to know them all. The important thing is to find a good one to take care of our needs, and the availability of many to choose from is actually an advantage. The breadth of choice in most P. R. elections (including near neighbors but also others) means that voters hardly ever have just a choice of evils, as in many single-member-district elections, and can almost always elect a representative for whom they have some enthusiasm. In the recent school elections nine out of ten voters helped elect someone on this basis in every district regardless of the number of candidates.

That said, it should be noted that in the recent school elections the fairly low visibility of most of the candidates would probably be still worse if each of the districts were divided into nine subdistricts for election purposes, so that the media would have 288 separate elections to cover instead of thirty-two. In effect, 288 separate campaigns

would have to be organized and financed with negligible media help.

It should be noted also that in the school board elections the campaigning of groups and individuals was supplemented by an official leaflet mailed with public funds to every registered voter, containing information in English and Spanish about the method, time, and place of voting, the list of candidates for the district, and a short statement from every candidate who submitted one. Such an information leaflet, with elaborations of biographical data, might well be required by Charter for any community board elections the Commission may propose -- and perhaps for all city elections.

For those who have little interest in particular candidates but wish to support a slate, slates might be identified on the ballot. This will be discussed later under "Partisanship and Special Interests."

Troubles at the Polls

Widespread difficulties and irregularities occurred at the polling places during the 1973 elections, which led to the special investigation of the 1973 school board elections made for the State Department of Education by former Education Board Chairman Max Rubin.* These difficulties were caused by the ineptness, insufficient training, and, in some

* See Appendix B in this report.

instances, unscrupulousness of some of the regular election inspectors appointed by the two major parties. In particular, such difficulties have only an incidental connection with proportional representation, the central counts of which were conducted under competent nonpartisan auspices by a special unit of the Board of Elections organized for that purpose.*

There were some difficulties in the central counts also, but they were caused chiefly by misplacement of ballots in the wrong ballot boxes by inspectors in schools with several voting places, and by misdeliveries and delayed deliveries of ballot boxes to the central counting places by truckers and police. All the final returns were known within eight days, most of them much sooner.

Much emphasis is being properly given to the suggestion that future school elections be put entirely in the hands of a permanent, independent special unit, which would supervise publicity, voter education and information, registration, balloting, central counting, and reporting, all to be organized on a nonpartisan basis.

Much attention is also being given to the possibility of computerizing proportional representation elections before the next Community School Boards are elected. It is

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* The new election ordered (and conducted in exemplary fashion) in District 17 was caused by wholesale ballot stuffing in one polling place, for which the wife of a candidate, improperly employed as an inspector, has been indicted. The special unit urged the reelection when the fraud was discovered.

known that the city's existing computers will handle such elections accurately and expeditiously once the voters' choices are fed into them. The problem being worked on is the devising of some simple and inexpensive mechanism for getting the voters' choices recorded and into the computers.

However, the desirability of the proportional method does not stand or fall on the availability of computer arrangements. The central hand-counting arrangements that have been worked out for P.R. elections are the most carefully safeguarded paper ballot counting arrangements to be found anywhere. There are two reasons for this: (1) the whole count is concentrated in one location with the candidates and their representatives present, and (2) every ballot is examined by at least two pairs of counters in different parts of the counting hall every time it is originally counted or transferred from a candidate who cannot use it to the voter's next choice.

Partisanship and Special Interests

The actual results of the school board elections have been criticized on the ground that slates put forward by special interest groups won a majority of seats in a number of districts -- slates of church-related groups in 1970 and of the United Federation of Teachers in 1973. These results have been interpreted by some to indicate that P.R. gives an undue advantage to organized groups and by others to suggest

that, since some kind of "political" activity seems inevitable anyway, the school elections might just as well be held at the same time as regular elections for other offices and perhaps by the same methods. These inferences are then sometimes applied to the consideration of P.R.'s applicability to elections of local boards in a decentralized form of city government.

The second of these inferences equates political activity in the broad sense with political party activity. However, the political activity of the school board elections was not generally party-related. Though here and there party groups did take some part, there were many places where the party organizations took no part at all.

The church and UFT groups ran their candidates without benefit of identification of the groups on the ballots and at a time when the partisan considerations of the primaries and general elections were not before the voters. To suggest that the mere presence of group activity makes it logical to abandon these two features and give a special advantage to the national parties at the expense of the other groups that choose to participate in school activities is a complete non sequitur.

It is not necessary to pass on the merits of particular groups to point out that the groups which did well in the school elections did so only in proportion to the support given their candidates by the voters.

Proportional representation was not promoted with the idea of eliminating slates or subverting majority rule, but for the purpose of involving everyone so far as possible and giving a fair share to minorities as well as majorities. Without P.R. the successes of the most active groups might well have been much more pervasive (or with subdistricts for election purposes might even have been less than their proper share, depending on where the lines were drawn). Among the winners were many candidates of parent groups which might otherwise have been excluded.

P.R. gave no special advantage to organized groups beyond the proper advantage resulting from the numbers of their supporters. The remarkable thing about the 1970 elections was not that more than two-thirds of the winners were included on slates of one kind or another, but that something approaching one-third were elected on their personal appeal without benefit of significant slate activity. There was no district in either the 1970 or the 1973 elections in which any one slate elected all the members. And many of the winners who were on slates owed their election primarily to their personal appeal.

Consideration should be given to permitting slates to be identified on the ballots in order to make it easier for voters to support a slate if that is what they want to do. Because of the special psychological advantage that attaches to national party names in nonschool elections, the use of

these particular names might be excluded. Other names might be specified on the petitions on the same basis as independent nominations are identified in other elections; or groups of candidates might be allowed to associate their candidacies and be assigned letters or emblems to identify them on the ballots. This could be done without interfering with the alphabetical arrangement of names and rotation by election districts that now characterize the school board elections and city primaries.

Another logical convenience for slate voters which would not interfere with the objectives of proportional representation would be to allow two or more candidates to be nominated by the same petition, but with a requirement of correspondingly more signatures of voters who have signed no other petition. If the present requirement of 200 signers to nominate one candidate is kept, 600 signers might be permitted to nominate three candidates, for example.

Overlapping Terms and Subdistricting

The Rubin report suggests that school board members be elected for overlapping terms for the sake of continuity, five members of the nine being elected at one election and four at the next.

Considerations against this suggestion are the following:

1. With proportional representation, continuity is

automatically obtained without overlapping terms. Representation changes only to the extent that sentiments and candidacies change and landslides are practically unknown. Forty percent of the members elected in 1973 were holdovers.

2. Since overlapping terms are not necessary for continuity, there is an obvious advantage in having each board reflect the latest expression of the voters' wishes. With overlapping terms a particular election might give a very clear verdict on a new issue but the holdover members, not elected on that issue, might prevent the verdict from being given effect, at least till after the next election.

3. Unless the size of the boards is increased, which seems unnecessary, overlapping terms will make the boards less representative and exclude some elements whose participation in school affairs might be very desirable. To be sure of electing one of nine by proportional representation, as under the present setup, requires only one-tenth of the total valid vote (+1). To be sure of electing one of five requires one-sixth of the total vote (+1). To be sure of electing one of four requires one-fifth of the total vote (+1). So a group of like-minded voters with one-ninth of the votes, for example, but considerably less than one-sixth, could be sure of electing one of the nine members under the present setup, but would be shut out in successive elections under the five-four arrangement. A number of the black and Puerto Rican members have been elected as one of

nine who could not have won as one of five. An example is the 1973 election of a black board member in Staten Island. Ethnic balance is only one of the various kinds of balance in community representation that might be unfortunately upset by the absence of P. R.

Suggestions that the school districts be divided into smaller districts for election purposes are open to this same objection even if the proportional representation method is retained. The suggestion of three subdistricts, each electing three members, for example, would under P.R. require a group of voters to have one-quarter of the votes (+1) in one of the subdistricts in order to be sure of electing a member. So a group consisting of one-fifth of all the voters in the whole district, enough to elect two now, might not elect any members. Even a majority group might elect only four of the nine members if its votes were distributed disadvantageously among the three districts.

Of course, if each district were divided into nine subdistricts, each electing one member, proportional representation would no longer be possible. Whether deliberately gerrymandered or not, minority voters in each district would be disregarded in the make-up of the representative body. Whereas a majority in any subdistrict could be sure of electing one member, a group several times that large might elect no one if it were divided into several subdistrict minorities by the district lines.* A majority group could

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* To take an extreme example, a group with 5 percent (cont'd)

elect all nine members or only one of the nine** or any number in between, depending on how its votes were divided up among the subdistricts.

Added to the undependability of this method for producing representative results is the practical problem of subdistricting. Any apportionment presents serious problems, both in meeting legal criteria (witness the current City Council situation) and in satisfying the differing elements in the electorate, some of which in each district may be put at a disadvantage by whatever lines are drawn. The vexations connected with dividing the city into 288 subdistricts for election purposes would be formidable.

Vacancies

The filling of Community School Board vacancies by the remaining members has caused some serious problems because of deadlocks in agreeing on appointees. In District 1 the board membership at one time fell below the quorum required to do business.

The method also presents other problems. While it can be used to fill gaps in the representation of important

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* of the total school district vote in each of the nine equal subdistricts would be a minority in each and might elect no one. Yet such a group would total 45 percent of the whole electorate, or as many as all the voters in four subdistricts (11.1 percent x 4) and enough to carry eight of the nine if properly distributed.

** If the group had a little less than a majority in each of eight subdistricts and a large majority in the ninth subdistrict.

elements in a community, it can also be used to deprive important elements of representation they obtained at the regular school board election. When a representative of an identifiable minority resigns, the logical course is to appoint another suitable representative of the same minority, but there is nothing in the law that requires this to be done.

In any event, a recent court decision has made some revision of present procedure imperative. The Court of Appeals decided on April 25, 1973, that an appointment made by the remaining board members to fill a vacancy could not normally last beyond the calendar year when the vacancy occurred because of a provision of the State Constitution (Article 13, Section 3): "The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political (calendar) year next succeeding the first annual election after the happening of th vacancy."

An answer to all these difficulties was offered in 1972 by Edward Amann, then chairman of the State Assembly's New York City Committee, and Constance Cook, chairman of the Assembly's Education Committee, in Assembly Bill No. 11187 of that year. This bill provided that vacancies be filled by recounts of the ballots cast at the original election,

to determine who presumably would have been elected if the vacating member or members had not been running. For this purpose it is not necessary to recount all the ballots but just those that elected the vacating member or members together with those (usually about a tenth of the total) that did not help elect anyone at the original election -- in other words, just the ballots of the voters left without representation after the occurrence of the vacancy or vacancies. The bill provided precise rules for carrying out such recounts.

This method would not be an appointment but an election by the voters by means of a reexamination of their expressed choices, and therefore would not be subject to the limitation of the constitutional mandate on which the courts relied. It would also avoid any prolonged deadlocks, and would fill vacancies by the election of candidates who were indicated by the voters as logical successors to the vacating members.

This method was given serious consideration and passed the Senate in the 1974 Legislature. It should be borne in mind in connection with any proposed adoption of proportional representation. It is a solution available under P.R. because of its preferential ballot but not available under methods of election that do not permit voters to express alternative choices.

Conclusions

Recognizing that not all the voters who should vote will ever do so, it would theoretically be possible for a knowledgeable and wise appointer to name community boards, for schools or other purposes, which would be more representative than any that could be obtained by any process of election. Knowledge and wisdom, however, cannot be assumed as a general rule, and probably most people would agree that if local boards are to be given significant decision-making powers on behalf of the community, they should be elected. If elected, they should presumably be made as representative as possible.

The evidence presented in this memorandum on New York's most recent experience with proportional representation in local elections deserves careful consideration when the Commission comes to a decision on the method to be recommended for any other local elections.

community school board has failed, within a reasonable time, to take appropriate action.

2. Standing

2.1. Any person or organization aggrieved by the failure of a community school board or any member thereof to comply with any applicable provisions of law, by-laws, rules or regulations, directives or agreements may petition the Chancellor concerning the alleged violations.

3. Contents of Petition

3.1. Any petition filed with the Chancellor seeking a redress of grievances shall be in writing, signed by the person or persons bringing the grievance, and shall contain the following information:

(a) The name and address of the person filing the grievance.
(b) A statement of the interest of the person in the matter.
(c) The identity of the community school board or member(s) against whom the complaint is brought.
(d) The act or acts of the community school board of member(s) against which the complaint is made.
(e) The nature of the claimed violation of law, by-laws, rules or regulations, directives or agreements involved.
(f) The date or dates and manner in which the claimed violation was brought to the attention of the community school board or member(s) and the response, if any, of the board or member(s).
(g) The action which the person believes the Chancellor should take.

3.2. The Chancellor may investigate and act upon any complaint received notwithstanding that it fails to comply in whole or in part with the requirements of 3.1 above.

3.3. Petitions shall be filed by delivering or mailing one copy to the Chancellor, Board of Education, 110 Livingston Street, Brooklyn, New York 11201. A copy shall also be sent or delivered to the Community School Board against which the complaint is filed.

3.4. Upon receipt of the Petition, the Chancellor shall consult with the Community School Board to obtain such books, records, documents, or information as may be necessary to investigate the allegations of the Petition.

4. Response by the Chancellor

4.1. Within 15 days after the receipt of a petition, the Chancellor shall mail to the person alleging the violation, with a copy of the statement to the Community School Board, a statement indicating that:

(a) The petition does not comply with the requirements set forth in 3.1 above.

APPENDIX D

RULES AND REGULATIONS GOVERNING GRIEVANCES

AGAINST COMMUNITY SCHOOL BOARDS OR MEMBERS*

1. GENERAL POLICY

1.1. It is the policy of the central board and of the chancellor to recognize the full powers authorized by law for community school boards, in the setting of city-wide policies by the central board and in the Chancellor's implementation of those city-wide policies, by granting maximum flexibility and discretion to the community school boards consistent with law in those areas over which the community school boards have jurisdiction under law or operate under delegated authority from the central board or the Chancellor.

1.2. Nothing contained in these rules shall be deemed to limit or otherwise prevent the Chancellor or his designee from initiating action on his own motion nor shall any provisions of these rules be deemed to require that the Chancellor take action when at the discretion of the Chancellor he declines to act.

1.3. In general, the Chancellor will not accept direct jurisdiction over complaints or grievances under his enforcement powers where alternative procedures exist for the resolution of such complaints, e.g., employees who have specific grievance mechanisms available under a collective bargaining agreement will be expected to utilize those mechanisms for the redress of their grievances.

1.4. In general, the Chancellor will not accept direct jurisdiction over complaints or grievances unless the aggrieved party has brought the matter to the attention of the community school involved and the

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* Brought pursuant to Section 2590-1 of the Education Law. These rules were adopted at a public meeting held on November 17, 1971.

(b) Because the matter has not been first brought to the attention of the community school board or member(s) or because the community school board or member(s) has had an inadequate amount of time in which to respond to the complaint and take appropriate action or because the matter has not adequately been presented to the community school board or member(s), no action will be taken by the Chancellor unless and until the matter is presented to the community school board or member(s) for proper resolution.

(c) The matter has been investigated by the Chancellor or his designee and the Chancellor, in his discretion, has determined that no further action should be taken.

(d) The matter has been investigated and the Chancellor or his designee has attempted or will attempt conciliation of the matter.

(e) Further information is required before the Chancellor can act on the matter.

(f) The matter is under consideration by the Chancellor and will be responded to upon completion of the investigation.

(g) The matter does not properly fall within the scope of the grievance procedures.

5. Conciliation and Enforcement by the Chancellor

5.1. If in the judgment of the Chancellor based on the petition or on his own initiative, an appropriate case of exercise of the Chancellor's powers is presented, the Chancellor shall, to the maximum extent possible and feasible based on all of the circumstances of the matter, attempt conciliation of the matter with the community school board or member(s).

5.2. In attempting conciliation, the Chancellor or his designee will attempt informal resolution of the problem with the community board or member(s).

5.3. The Chancellor's efforts at conciliation may include but shall not be limited to communication with or meeting with any or all of the parties involved, fact-finding, mediation, arbitration, or involvement of other individuals or groups.

5.4. If, in the judgment of the Chancellor, the community board or member(s) has failed to comply with applicable provisions of laws, by-laws, rules or regulations, directives and agreements, and efforts at conciliation have failed, the Chancellor may issue an order requiring the community board or member(s) to cease its improper conduct or take required action.

5.5. The Chancellor may enforce any such order in accordance with the provisions of law.

6. Appeals to the City Board from Orders of the Chancellor

6.1. Any community board or suspended or removed member(s) thereof may, within fifteen days after issuance of such order, appeal an order issued pursuant to 5.3 and 5.4. above to the city board in accordance with Part 113 of the Regulations of the State Commissioner of Education.

7. Appeals to the City Board in Other Matters

7.1. Any person or group that has appealed to the Chancellor may appeal the failure of the Chancellor to act or to take appropriate action on their grievance to the city board. An appeal from a failure to act on the part of the Chancellor may not be taken prior to thirty days after such failure to act. An appeal from an action taken by the Chancellor must be taken within fifteen days following such action.

APPENDIX E

CSB BUDGETS: LETTER FROM CHANCELLOR IRVING ANKER TO CITY COUNCILMAN MICHAEL DEMARCO.

April 18, 1974

Honorable Michael DeMarco
The Council of the City of New York
City Hall
New York, New York 10007

Dear Councilman DeMarco:

Dr. Lachman has forwarded your letter of March 28, 1974, to me. I have answered many of your inquiries for fiscal information about Community School Districts. However, several of your questions are somewhat ambiguous and do not appear to be amenable to pen and paper responses. I invite you to meet with me and my staff to discuss these and other questions you may have about the fiscal affairs of Community School Boards.

1. COMMUNITY SCHOOL DISTRICTS

(1) Question

How are allocations made in budgets for professional salaries and with what considerations by the Central Board for seniority of staff in setting average salaries?

-- The amount allocated to Community School Districts is based on the number of students, not the number of teachers.

-- Funds earmarked in the Mayor's expense budget for Community School Districts are placed in Unit of Appropriation 30. These "Program 30" funds are then subdivided by the New York City Board of Education into several modules.* Funds placed in Module 2, Instructional Services, are primarily for salaries of kindergarten, elementary, and

* See "The 1973-1974 Allocation Formula: An Analysis," pp. 1-4.

junior high school teachers, principals, guidance counselors, school secretaries, school aids, et al. In fiscal year 1973-1974, $683,081,029 or 62.27 percent of Program 30 funds were placed in Module 2. Community School Districts have been allocating approximately 80 percent of their Module 2 monies for teacher salaries; systemwide, the range is between 74 percent and 84 percent.

-- However, each district allocation is adjusted to reflect interdistrict differences in average teacher salaries. The adjustment for each district is equal to its number of teachers multiplied by the difference between the district's average teacher salary and the city-wide average teacher salary. If a district's average teacher salary is higher than the city-wide average, it gains a positive adjustment. If a district's average teacher salary is lower than the city-wide average, it loses a negative adjustment. Since the adjustment is based on the deviation from the city-wide average, what one district gains is lost by at least one other district, and vice versa.*

-- Professional staff salaries are set by contract. The schedule consists of sixteen steps. A teacher's salary automatically increases one step on the anniversary of employment and on March 1st. Thus, in eight years, a teacher can go from starting pay to the top salary. In addition, there are four differentials at each step approved for educational credits.**

(2) Question

What guidelines does the Central Board set, if any, for the size of District Office Staffs?

-- In fiscal year 1973-1974, $17,211,394 or 1.57 percent of Program 30 tax levy funds were placed into Module 1, Community School Board and District Administration. District office staff salaries are paid with these funds.

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* See "The 1973-1974 Allocation Formula: An Analysis," pp. 31-34.

** See Agreement Between the Board of Education of the City School District of the City of New York and United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, September 9, 1972-September 9, 1975, pp. 98-112.

-- The size of a district's administration staff is based on the amount of funds it is allocated for this activity from Module 1 monies. The amount is calculated from a formula that takes three-fourths of the total Module 1 funds and divides it equally among the 32 Community School Districts, and the remaining Module 1 funds are allocated on the basis of number of students.*

(3) Question

What limitations are set, if any, on the number of Certificates of Competency issued by the District Offices?

-- Certificates of Competency may only be used for State or Federally funded programs and cannot be used for tax levy programs. Certificates are granted only for positions whose job descriptions cannot be met by regularly licensed positions and are valid for a maximum period of one year. Certificates are renewable contingent upon an annual review and recertification. Certificate salaries may not exceed regular pedagogic salary rates at comparable levels of experience and educational qualifications.**

(4) Question

What considerations, if any, are given for special funds for non-special service schools?

-- Non-Title 1 or non-special schools may share in the special purpose funds (Module 5A) provided for programs and activities that benefit the entire Community School District. For example, a non-Title 1 school could have a bilingual program supported by special purpose funds.***

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* See "The 1973-1974 Allocation Formula: An Analysis," pp. 5-9.

** Guidelines covering the issuance of Certificates of Competency are covered in "Certificates of Competency For Use In Reimbursable Programs: Division of Personnel Circular No. 6, October 16, 1973.

*** See "Fiscal Year 1973-1974 Allocation of Unit of Appropriation 30 to Community School Districts," Business and Administration Circular No. 1, June 25, 1973, p. 41.

-- Non-Title 1 schools may also draw upon a special purpose reserve (Module 5B) for district purposes such as register increase, salaries of properly excessed personnel and preparation period coverage for Special Education classes.

-- $34,154,051 of Module 2 funds is set aside for distribution on the basis of low reading scores of students in all 32 Community School Districts.

2. CENTRAL BOARD OF EDUCATION

(1) Question

When are tentative budgets submitted by Community School Districts and how are they audited to determine if they are within prescribed guidelines?

-- Tentative budgets are submitted by Community School Districts early in August, following the issuance of guidelines for preparation of district budget schedule in July.* They are carefully monitored by a specially trained staff in the Office of Planning-Programming-Budgeting to determine their adherence to prescribed guidelines. There is a considerable amount of telephone, personal and written communication with district fiscal personnel during this period.

(2) Question

What controls are exercised by the Central Board to bring District budgets into line?

-- Instructions for preparing line-by-line budgets are issued to all Community School Districts.** Each district is responsible for preparing detailed budget schedules describing the allocation of Program 30 funds.

-- Required procedures for position control and payroll processing are issued to all Community School

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* See "Preparation of District Budget Schedules for 1973-1974 for Unit of Appropriation 30 Allocations," Business and Administration Circular No. 2, July 10, 1973.

** Ibid.

Districts in August.* Adherence to these procedures promotes proper payroll processing and insures that the number of pedagogic personnel on payroll does not exceed the number of budgeted pedagogic positions. Careful control of the rate of expenditures incurred through the payroll process keeps expenditures within allocations.

-- Guidelines for other than personal service expenditures are also issued to all Community School Districts.** The guidelines summarize Board of Education policies. The Comptroller has approved these guidelines.

-- In addition, the position status for every district is centrally monitored and controlled by the Office of Planning-Programming-Budgeting. This office also conducts analyses of the financial condition of every district.

(3) Question

What training is given to Community School Board members for budget matters?

-- Periodic meetings are held to advise Community School Board members of budgetary matters.

-- The Executive Director of Business and Administration holds monthly meetings to discuss budgetary and accounting matters with district business managers and their staff. A recent agenda for one of these meetings is attached.***

-- The biweekly Consultative Council meetings often discuss budgetary matters. The Chancellor and other professional staff serve as technical advisors at these meetings.

-- In addition, there are frequent direct meetings

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* See "Position Control and Payroll Processing 1973-1974," Business and Administration Circular No. 4, August 10, 1973.

** See "Interim Guidelines for O.T.P.S. Expenditures of Board of Education Programs," Special Circular No. 19, October 1, 1973.

*** See "Monthly Meeting - Division of Business and Administration, April 4 Agenda."

and telephone communications between district staff and central budgetary staff.

(4) Question

Why are some districts determined to be in debt by mid-year without being forewarned?

-- Districts are notified of their financial status as soon as the information is available. It should be noted that school staffs are rarely stabilized before November, thus preventing any meaningful analysis of expenditure rates until December. In addition, there is a lag time between a district's activity and its recording at headquarters.

-- Districts also have the authority and responsibility to conduct continuing analysis of their rates of expenditures beginning in August when schedules are submitted.

(5) Question

Which Community Districts are presently considered over their budget?

-- At the present time all thirty-two Community School Districts are spending Program 30 funds in compliance with state Education Law which prohibits deficits.

(6) Question

In which area are those Boards specifically overspent?

-- See answer to above question.

(7) Question

How is spending by School Board members for personal expenses relating to Board business audited?

-- All Community School Districts are audited annually by the Bureau of Audit of the Board of Education. Guidelines for personal expenses are found in a Special Circular No. 19, dated 10/1/73, issued by the Board of Education and in the

Community School District Procedures Manual. These guidelines have been approved by the Board and the Comptroller.*

(8) Question

What standard allowances, if any, are given to Board members for expenses?

-- Allowances to Community School Board members are described in Attachment 6, Special Circular No. 19, October 1, 1973.

3. GENERAL INFORMATION

(1) Question

What specific recommendations does the Central Board have to improve the fiscal management of Community School Districts?

-- The capability of district business managers should be upgraded. To help bring this about, the salary level should be on a par with that of private industry.

-- Fiscal record keeping at the district level needs improvement. In some instances district staffs often do not have the training to handle complex budgetary procedures. Employing assistant accountants in the schools would materially help the district budget process.

-- Conferences to train Community School Boards and district staff in fiscal management techniques should continue and be expanded.

-- Improve management information systems capabilities of Board of Education.

(2) Question

What investigation does the Central Board conduct to eliminate areas of conflict of interest of Community School Board members?

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* See "Interim Guidelines for O.T.P.S. Expenditures of Board of Education Programs," Special Circular No. 19, October 1, 1973.

-- The Chancellor has issued a number of statements regarding potential or actual conflicts of interest.* All allegations of conflict of interest are first investigated by the Bureau of Audit and Investigation and where appropriate referred to the Commission of Investigation, the Board of Ethics and/or the District Attorney.

(3) Question

What records do suppliers to the Board of Education submit to indicate individuals or groups who have a monetary interest in the corporation?

-- Information is requested about such economic interests through the Contract Bid books.**

(4) Question

What control is exercised over Community School Boards or militant groups (of any racial, ethnic or religious persuasion) who practice discrimination in hiring practices in the name of "community control"?

-- Union groups, other special interest groups, members of Community Boards, or professional staff members bring such matters to the attention of the Chancellor. He then initiates the necessary investigatory action.

(5) Question

How does the Central Board assure the spending of funds appropriated for security guards in the budget is being spent appropriately?

-- Costs incurred for hourly security guard service are indicated in each school's monthly (payroll) service report as charges against the funds budgeted by each district for this service.

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* See Memorandum by Harvey B. Scribner entitled "Conflict of Interest," December 3, 1971.

** See "Standard Form of Contract Proposal," p. iv.

-- As with every other budgetary function, security guard costs are checked by the Board's Bureau of Finance to insure that the costs do not exceed the funds budgeted for security guards.

Very truly yours,

(Signed)

IRVING ANKER
Chancellor

cc: Dr. Seymour P. Lachman
President
Mr. Isaiah E. Robinson
Chairman, Finance Committee
Dr. Bernard R. Gifford
Deputy Chancellor